UNITED STATES
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

OFFICE OF GENERAL COUNSEL

FISCAL YEAR 2014 ANNUAL REPORT

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I. Structure and Function of the Office of General Counsel

A. Mission of the Office of General Counsel

The Equal Employment Opportunity Act of 1972 amended Title VII of the Civil Rights Act of 1964 (Title VII) to give litigation authority to the Equal Employment Opportunity Commission (EEOC or Commission) and provide for a General Counsel, appointed by the President and confirmed by the Senate for 4-year term, with responsibility for conducting the Commission's litigation program. Under a 1978 Presidential Reorganization Plan, the General Counsel became responsible for conducting Commission litigation under the Equal Pay Act of 1963 (EPA) and the Age Discrimination in Employment Act of 1967 (ADEA) (both formerly enforced by the Department of Labor). Subsequently, the General Counsel's authority was extended to Commission litigation under the employment provisions of the Americans with Disabilities Act of 1990 (ADA) (Title I; effective July 26, 1992) and the employment provisions of the Genetic Information Nondiscrimination Act of 2008 (GINA) (Title II; effective November 21, 2009)

The mission of EEOC's Office of General Counsel (OGC) is to conduct litigation on behalf of the Commission to obtain relief for victims of employment discrimination and ensure compliance with the statutes EEOC is charged with enforcing. Under Title VII, the ADA, and GINA the Commission can sue nongovernmental employers with 15 or more employees. The Commission's suit authority under the ADEA (20 or more employees) and the EPA (no employee minimum, but for most private employers $500,000 or more in annual business) includes state and local governmental employers. Title VII, the ADA, GINA, and the ADEA also cover labor organizations and employment agencies, and the EPA prohibits labor organizations from attempting to cause an employer to violate that statute. OGC also represents the Commission on administrative claims and litigation brought by agency applicants and employees.

B. Headquarters Programs and Functions

1. General Counsel

The General Counsel is responsible for managing, coordinating, and directing the Commission's enforcement litigation program. He or she also provides overall guidance and management to all components of OGC, including district office legal

units. The General Counsel recommends cases for litigation to the Commission and approves other cases for filing under authority delegated to the General Counsel under the Commission's December 2012 Strategic Enforcement Plan. The General Counsel provides reports regularly to the Commission on litigation activities, and advises the Chair and Commissioners on agency policies and other matters affecting enforcement of the statutes within the Commission's authority.

2. Deputy General Counsel

The Deputy is responsible for overseeing all programmatic and administrative functions of OGC, including the litigation program. OGC functions are carried out through the operational program and service areas described below, which report to or through the Deputy.

3. Litigation Management Services

Litigation Management Services (LMS) oversees and supports the Commission's court enforcement program in the agency's district offices. Also, in conjunction with EEOC's Office of Field Programs (OFP), LMS oversees the integration of district office legal units into the investigative enforcement structure of the district offices. LMS provides direct litigation assistance to district offices as needed, drafts guidance (including maintaining the *Regional Attorneys' Manual)*, develops training programs and materials, and collects and creates litigation practice materials. LMS also reviews proposed suit filings by regional attorneys under their redelegated litigation authority from the General Counsel, and reviews various litigation related matters, such as requests to contract for expert services and proposed resolutions in cases in which OGC has retained settlement authority. LMS contains a unit that provides technical support to field offices in matters such as producing, receiving, and organizing electronically stored information in discovery, extracting and preserving digital media, and collecting and preserving information from social media sites. LMS and OFP staff make joint visits to district offices to provide technical assistance regarding the integration of the district legal and investigative units.

4. Internal Litigation Services

Internal Litigation Services represents the Commission and its officials on claims brought against the Commission by agency employees and applicant for agency jobs, and provides legal advice to the Commission and agency management on employment-related matters.

5. Litigation Advisory Services

Litigation Advisory Services (LAS) evaluates district office suit recommendations in cases that require General Counsel or Commission authorization, and drafts litigation recommendations to the General Counsel for approval or submission to the Commission. LAS responds to Commissioner inquiries on cases under consideration for litigation, acting as OGC's liaison and contact point between the Commissioners and the district office legal units. LAS also performs special assignments as requested by the General Counsel.

6. Appellate Services

Appellate Services (AS) is responsible for conducting all appellate litigation where the Commission is a party. AS also participates as amicus curiae, as approved by the Commission, in United States courts of appeals, as well as federal district courts and state courts, in cases involving novel issues or developing areas of the law. AS represents the Commission in the United States Supreme Court through the Department of Justice's Office of the Solicitor General. AS also makes recommendations to the Department of Justice in cases where the Department is defending other federal agencies on claims arising under the statutes the Commission enforces. AS reviews EEOC policy materials, such as proposed regulations and enforcement guidance drafted by the Commission's Office of Legal Counsel, prior to their issuance by the agency.

7. Research and Analytic Services

Research and Analytic Services (RAS) provides expert and analytical services for cases in litigation, assists EEOC attorneys in obtaining expert services from outside the agency, and provides technical support to field staff investigating charges of discrimination. RAS has a professional staff with backgrounds and advanced degrees in areas such as economics, statistics, and psychology, who serve as consulting and testifying experts on cases in litigation. RAS also provides services to other agency offices, such as conducting social science research on issues related to civil rights enforcement, advising the agency on the collection of workforce data, and developing and maintaining special census files by geography, race/ethnicity and sex, and occupation.

8. Administrative and Technical Services Staff

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C. District Office Legal Units

District office legal units conduct Commission litigation in the geographic areas covered by the respective offices and provide legal advice and other support to district staff responsible for investigating charges of discrimination. In addition to the district office itself, OGC Trial Attorneys are stationed in most of the field, area, and local offices within districts. Legal units are under the direction of Regional Attorneys, who manage staffs consisting of Supervisory Trial Attorneys, Trial Attorneys, Paralegals, and support personnel.

II. Fiscal Year 2014 Accomplishments

In fiscal year 2014, OGC filed 133 merits lawsuits and resolved 136, obtaining over $22 million in monetary relief. Section A below contains summary statistical information on the fiscal year's trial court litigation results (more detailed statistics appear in part III of the Annual Report). Sections B and C contain descriptions of selected trial and appellate cases. Section D describes some of the outreach conducted by OGC staff during the year.

A. Summary of District Court Litigation Activity

OGC filed 133 merits suits in FY 2014. Merits suits consist of direct suits and interventions alleging violations of the substantive provisions of the Commission's statutes, and suits to enforce settlements reached during EEOC's administrative process. No interventions or suits to enforce administrative settlements were filed during the fiscal year. In addition to merits suits, OGC filed 35 actions to enforce subpoenas issued during EEOC investigations.

OGC's FY 2014 merits suit filings had the following characteristics:

77 contained claims under Title VII (57.9%)
2 contained claims under the EPA (1.5%)
11 contained claims under the ADEA (8.3%)
49 contained claims under the ADA (36.8%)
2 contained claims under GINA (1.5%)
32 sought relief for multiple individuals (24%)

The above claims exceed the number of suits filed (and percentages total over 100) because cases sometimes contain claims under more than one statute. There were 7 (5.3%) of these "concurrent" suits among the FY 2014 filings.

OGC resolved 136 merits suits in fiscal year 2014, resulting in monetary relief of $22,489,672. These resolutions had the following characteristics:

87 contained claims under Title VII (64.0%)
5 contained claims under the EPA (3.7%)
11 contained claims under the ADEA (8.1%)
47 contained claims under the ADA (34.6%)
1 contained claims under GINA (0.7%)

45 cases sought relief for multiple individuals (33%)
13 were concurrent suits (9.6%)

Part III of the Annual Report contains detailed statistical information on OGC's FY 2014 litigation activities, as well as summary information for past years.

B. Selected District Court Resolutions

1. Title VII

a. Race Discrimination

(1) Hiring

In *EEOC v. McCormick & Schmick's Seafood Restaurants, Inc., and McCormick & Schmick's Restaurant Corporation*, No. 1:08-cv-00984 (D. Md. Sept. 12, 2014), EEOC alleged that restaurant operators with locations nationwide failed to hire black applicants for front-of-the-house positions (server, cocktail server, host/hostess, and bartender) at their two Baltimore, Maryland, Inner Harbor restaurants; segregated black front-of-the-house employees by assigning them to work at the less expensive restaurant; assigned black servers to smaller dining parties and tables and to tables with black customers; and engaged in discriminatory recruitment practices (an employment opportunity webpage pictured 11 nonblack and no black employees, and other portions of defendants' website showed almost all white staff with the exception of individuals pictured in back-of-the-house garb). Under a 2-year consent decree, applicable to the two Baltimore restaurants except for provisions relating to advertising, which apply to all of defendants' restaurants, defendants will pay $1.3 million (50% backpay and 50% statutory damages) to be distributed by EEOC to black applicants and employees in accordance with eligibility criteria set out in the decree. The decree prohibits defendants from discriminating against job applicants and employees on the basis of race, from printing or publishing any employment notice or advertisement that indicates a preference based on race, and from discriminating against applicants or employees who oppose practices unlawful under Title VII. Defendants will implement numerical goals for hiring black job applicants for front-of-the-house positions at the two Baltimore locations based on applicant flow, and will make up to 20 preferential offers of vacant positions to previously rejected black applicants. The decree contains detailed provisions on applicant tracking, goal assessment, and reporting.

In *EEOC v. Prestige Transportation Service, LLC, successor to Airbus Alliance, Inc.*, No. 1:13-cv-20684 (S.D. Fla. Sept. 26, 2014), EEOC alleged that Airbus Alliance, Inc., a provider of transportation services for commercial airline employees to and from Miami

International Airport, denied employment to non-Hispanic black applicants for driver and dispatcher positions because of their race, and discharged a human resources manager for opposing the discriminatory conduct. During at least the period from 2008 to 2010, Airbus refused to accept applications from non-Hispanic black applicants, and threw away applications it did receive. Airbus' human resources manager complained on multiple occasions to the company's owners/managers about this conduct, saying it was unlawful, but was repeatedly told it was none of her business. On November 10, 2010, about a week after the human resources manager complained again to Airbus' owners/managers about their refusal to accept applications from black applicants, she was told she was terminated because defendant needed to downsize in the bad economy. A 4-year consent decree provides $200,000 in compensatory damages: $110,000 to the former human resources manager and two other employees discharged for opposing defendant's discriminatory practices, and $90,000 to eligible class members as determined by EEOC based upon factors identified in the decree. The decree enjoins defendant from discriminating on the basis of race in hiring or terms and conditions of employment. For the term of the decree, defendant will offer new or vacant driver, dispatcher, and dispatcher coordinator positions to eligible class members identified by EEOC, and to the extent defendant has a hiring need that cannot be filled by class members, it will make a good faith effort to engage in targeted advertising and recruitment to encourage black applicants. Defendant will make a good faith reasonable effort to hire qualified black applicants at or near the rate of 46.8%, which represents the percentage of individuals applying for chauffer licenses in Miami-Dade County who are black.

(2) Promotion

In *EEOC v. Chapman University*, No. 10-1419 (C.D. Cal. June 20, 2014), EEOC alleged that a private university denied a black assistant professor of marketing tenure and a promotion to associate professor, resulting in her discharge. The assistant professor had begun teaching in defendant's school of business and economics in September 2001. She applied for tenure in May 2006 and defendant denied her application a year later. Four external reviewers had evaluated the assistant professor's performance in teaching, scholarship, and service and unanimously recommended that she be granted tenure. No black professor had ever been granted tenure in the school of business and economics, and of the 23 candidates for tenure from 1991 to 2009, only one other person had been denied tenure. A 2-year consent decree provides the former assistant professor $75,000 in compensatory damages and a retroactive promotion to associate professor effective January 1, 2007; the parties acknowledged that reinstatement was not sought or required. The decree enjoins defendant from race discrimination in terms and conditions of employment and from retaliation.

b. Sex Discrimination

(1) Hiring

In *EEOC v. Ventura Corporation Limited*, No. 3:11-cv-1700 (D.P.R. March 20, 2014), EEOC alleged that a Puerto Rico-based wholesaler of beauty products, jewelry, and personal care products excluded men from zone manager and support manager positions because of their sex, and disciplined and discharged a male employee in retaliation for filing EEOC charges and complaining about sex discrimination and retaliation. The male employee began working for defendant as a collector in March 2004. In July 2007, defendant announced several vacancies in its sales department for zone managers and support managers. Zone mangers are responsible for recruiting consultants to sell and distribute defendant's products to retailers, and support managers assist zone managers and manage areas operating without a zone manager. These two positions (40-50 at any one time) had been held exclusively by women. The male collector expressed interest in the announced positions, but was told by defendant's director of human resources they were for women only. In August 2007, after defendant hired women for all 10 vacancies, the male collector filed a charge of sex discrimination with EEOC. Soon thereafter, defendant placed him into a zone manager position, but assigned him to a historically problematic area, provided him fewer resources than female zone managers, and subjected him to disparate disciplinary standards. In July 2008, he filed a retaliation charge with EEOC, and 3 months later sent an email to several of defendant's top officials complaining of discriminatory treatment; he was terminated 5 days after sending the email. A 3-year consent decree provides $150,000 to the discharged male zone manager and $204,250 to a class of men denied zone or support manager positions or deterred or prevented from applying for such positions. The decree enjoins sex discrimination in hiring or terms and conditions of employment.

(2) Harassment

In *EEOC v. Pitre, Inc., d/b/a Pitre Buick/Pontiac*, No. 1:11-cv-00875 (D.N.M. March 27, 2014), EEOC alleged that an Albuquerque, New Mexico, car dealership subjected a class of male employees to sexual harassment, retaliated against individuals who complained, and constructively discharged employees due to the harassment and retaliation. A male lot attendant regularly engaged in offensive sexual conduct toward other male employees, including: grabbing, slapping, and touching them on the buttocks or genitals; exposing his penis and buttocks; forcing employees' faces into his crotch area; and making frequent unwanted sexual comments and jokes. The lot attendant's conduct was known to and encouraged by management. After a salesperson complained about the harassment in April 2010, his commissions were

taken away and he was assigned additional duties that prevented him from selling cars, causing him to resign. Defendant finally terminated the lot attendant when a salesperson complained in August 2010 that the lot attendant attempted to perform oral sex on him in front of a customer. A 3-year consent decree provides $2,091,660 to about 50 class members, and permanently enjoins defendant from sex discrimination and retaliation. Defendant will hire a consent decree monitor who will maintain regular onsite office hours and oversee implementation of the decree and defendant's compliance, and review complaints of sex discrimination. Defendant will not rehire five individuals named in the decree and will place a memorandum in the personnel of files of two named managers regarding their obligations under Title VII.

In *EEOC v. Wal-Mart Stores East, L.P.*, No. 5:13-cv-00795 (N.D. Ohio March 24, 2014), EEOC alleged that the national discount retailer subjected a female employee to sexually inappropriate conduct by a male coworker and discharged her in retaliation for reporting the conduct. The female employee is developmentally disabled and has the mental age of a 10-year-old. In 1999, at age 18, she was hired at defendant's Akron, Ohio, store as a lawn and garden associate through the assistance of a county developmental disabilities board. A job coach visited the store every 2 weeks to talk with defendant and the employee about the employee's work. In April 2005, a male employee was reprimanded for hugging the female employee, and she received a similar reprimand for the incident. Defendant did nothing further to address the male employee's conduct, and did not inform the female employee's job coach of the incident. Over the next 5 years, the male employee regularly touched the female employee's breasts and genitals, and had her touch his genitals, often in public areas of the store. On December 15, 2010, the female employee complained to a manager about the male employee 's sexual touching, and the male employee was discharged 3 days later for violating defendant's antiharassment policy. On January 7, 2011, defendant discharged the female employee for violating its antiharassment policy with respect to the male coworker. A 3-year consent decree provides $68,419 in backpay and $295,000 in damages to the former female employee and enjoins defendant from violating Title VII with regard to the terms, conditions, and privileges of employment of its female employees, and from retaliation.

In *EEOC v. Fred Meyer Stores, Inc.*, No. 3:11-cv-00832 (D. Ore. April 30, 2014), EEOC alleged that a grocery store chain headquartered in Portland, Oregon, subjected female employees at its Oak Grove, Oregon, store to sexual harassment. Beginning in April 2009, a regular customer of the Oak Grove store, a man in his late 80s, engaged in offensive sexual conduct towards a female employee, including touching her breast, groping her, and rubbing up against her. Managers dismissed the employee's complaints about the customer as "hearsay" despite two prior complaints from another

female employee about the customer and video evidence of the customer sexually harassing the other employee. Defendant directed the female employee to continue to serve the customer. In early May 2009, the female employee filed a police report about the customer and learned he was a registered sex offender. She immediately informed defendant, but the customer wasn't banned from the store until a month later. A 3-year consent decree provides $487,500 in compensatory damages to be distributed by EEOC to seven affected individuals, and enjoins defendant from sexual harassment and retaliation.

In *EEOC v. Wells Fargo Bank, N.A.*, No. 3:13-cv-00528 (D. Nev. Sept. 12, 2014), EEOC alleged that a national provider of diversified financial services subjected four female employees at a branch bank in Reno, Nevada, to a sexually hostile work environment, resulting in the constructive discharge of one of the employees. In December 2010, a female service manager transferred into the branch, and, with some participation from a another female employee, subjected female tellers to repeated sexually offensive conduct, including explicit comments about breasts and penises; images of male genitalia; graphic discussions of sexual behavior and activities; and suggestions that the tellers wear sexually provocative work attire to attract male customers. The highly sexualized atmosphere of the branch was well known to management, and despite repeated complaints from female tellers, and even customers, defendant did nothing to rectify the situation. Feeling that her job had become demeaning and humiliating, one of the female tellers resigned in April 2011. A 2-year consent decree, applicable to all locations in defendant's Sierra Mountain District (currently 11), provides $290,000 in compensatory damages to four current and former female tellers (with individual distributions determined by EEOC) and enjoins defendant from harassment on any Title VII basis and from retaliation. Defendant will provide each of the four tellers not currently in its employ with a signed letter indicating she is eligible for rehire. A former manager of the branch manager will have a written disciplinary warning placed in his personnel file referencing his failure to act in response to the harassment complaints and his failure to follow defendant's complaint procedures.

(3) Pregnancy

In *EEOC v. Benhar Office Interiors, LLC*, No. 1:14-cv-00574 (S.D.N.Y. April 15, 2014), EEOC alleged that a Manhattan office furnishings and architectural store denied an applicant a controller position because she was pregnant. In December 2011, a staffing firm sent defendant the resume of an applicant with over 10 years of experience as an account manager. During a telephone conversation with the staffing firm in which the applicant understood she was being offered a job as defendant's controller subject to reference checks, the applicant mentioned that she was pregnant and due in June 2012.

In a December 22 email to defendant providing the applicant's references, the staffing firm said the applicant was pregnant and due in early June. Defendant's president replied by email the same day, saying "Fuck might be a deal breaker." A few days later, defendant hired a nonpregnant person into the controller position. A 3-year consent decree provides $40,000 in backpay and $50,000 in compensatory damages to the rejected applicant and enjoins defendant from sex discrimination.

In *EEOC v. The WW Group, Inc., d/b/a Weight Watchers*, No. 2:12-cv-11124 (E.D. Mich. April 1, 2014), EEOC alleged that a Farmington Hills, Michigan-based operator of Weight Watchers franchises denied a person a group leader position because she was pregnant. In September 2009, a lifetime Weight Watchers member received a telephone message from a Weight Watchers area manager asking if she was interested in interviewing for a group leader position at defendant's Troy, Michigan, location. Group leaders are selected from Weight Watchers members who have reached a weight goal within their healthy weight range. The member returned the call and left the area manager a message that she was very interested in the position; she also mentioned that she was pregnant. The area manager returned the member's call a few hours later and told her it was not worth interviewing her because defendant did not hire pregnant group leaders. A 3-year consent decree provides $10,000 in backpay and $35,000 in compensatory damages to the member and enjoins defendant from pregnancy discrimination. The decree provides that defendant will not reject pregnant applicants for being over their goal weights, and will instead base hiring decisions on objective criteria unrelated to pregnancy, including being a lifetime member, regularly attending meetings, and being at goal weight before becoming pregnant.

(4) Terms and Conditions of Employment

In *EEOC v. JP Morgan Chase Bank, N.A.*, No. 2:09-cv-00864 (S.D. Ohio Jan. 31, 2014), EEOC alleged that a global provider of financial products and services, including home mortgages and home equity loans, subjected female employees at its Polaris Park, Columbus, Ohio, facility to unequal terms and conditions of employment, and discharged an employee for opposing the discriminatory practices. Of the approximately 50 Mortgage Consultant/Home Loan Sales Originators ("HLSOs") at the Polaris Park location, only 5 were women. Male HLSOs received on average twice as many calls from potential loan applicants as the females, even though the calls were supposed to be randomly assigned. Male managers regularly made sexist and disparaging remarks about female HLSOs. A high producing female HLSO who had lucrative accounts reassigned to male colleagues and was repeatedly denied commissions complained about the treatment to human resources and management but nothing was done. In late April 2008, approximately 2 weeks after the female HLSO

told her team leader and human resources that she had contacted EEOC, the facility's sales manager suggested she resign. Although the employee had no intention of resigning, defendant issued an email 2 days later indicating that she had resigned, deactivated her key card entry, and disconnected her phone line. A 2-year consent decree provides $1,450,000 to 16 female mortgage bankers (a new name for the HLSO position) -- $979,389 in compensatory and punitive damages and $470,611 as back wages -- and enjoins defendant from sex-based harassment and discrimination, and from retaliation. Defendant will develop a call data retention system to assess and analyze sales calls, and annually produce the information collected to EEOC.

c. National Origin Discrimination

(1) Terms and Conditions of Employment

In *EEOC v. Global Horizons, Inc., et al.*, No. 1:11-cv-00257 (D. Haw. Nov. 27, 2013, and Sept. 3, 2014), EEOC alleged that from at least 2003 through the summer of 2007, a labor contractor (Global Horizons, Inc.) and its Hawaii farm clients subjected workers from Thailand to disparate treatment and a hostile work environment due to their national origin and/or race (Asian), and retaliated against employees for opposing the discriminatory conduct. The Thai workers were threatened with physical harm, arrest, and deportation; housed inadequately and provided insufficient food and kitchen facilities; subjected to oppressive working conditions; and paid inadequately. The workers also were forbidden from leaving the farms, subjected to strict curfews, and prohibited from speaking to outsiders including family members. EEOC's claims against five farms were resolved through separate consent decrees with terms ranging from 2 to 7 years. In November 2013, claims against Del Monte Fresh Produce (Hawaii), Inc., were resolved for $1.2 million; Del Monte's parent, Del Monte Fresh Produce Company, is a signatory to the decree. Claims against four other farms were resolved in September 2014: Mac Farms of Hawaii, LLC (n/k/a MF Nut Co., LLC), $1.6 million; Kauai Coffee Company, Inc. (n/k/a McBryde Resources, Inc.), $425,000; Kelena Farms, Inc., $275,000; and, Captain Cook Coffee Co., Ltd., $100,000. Each of the five farms is enjoined from discriminating against or harassing any person on the basis of national origin or race, and from retaliation. Defendants, and Del Monte's parent, are required to take a number of affirmative steps to prevent and remedy discrimination against workers on their premises. These include establishment of farm labor contractor Title VII compliance programs to ensure that contractors will comply with all state and federal employment laws; complaint reporting and investigation procedures; drafting, revision, and distribution of antiharassment, antidiscrimination, and antiretaliation policies; annual comprehensive training on harassment, discrimination, retaliation, and defendants' EEO policies and procedures; and annual reports to EEOC on compliance

with the decrees, including the results of audits of employee housing, transportation, and working conditions.

(2) Harassment

In *EEOC v. Rizza Cadillac, Inc.*, No. 1:13-cv-06696 (N.D. Ill. June 24, 2014), EEOC alleged that an automobile dealership in Tinley Park, Illinois, subjected three employees to a hostile work environment due to their Arab national origin and Muslim religion. The employees, who started as salespersons in 1987, 2005, and 2007, and left between August and November 2009, said that two managers regularly referred to them as "terrorists," "sand niggers," and "Hezbollah," and mocked the Qur'an and the manner in which Muslims pray. The employees complained to the dealership's general manager and to a coowner about the managers' conduct, but defendant failed to take corrective action. A 2-year consent decree provides a total of $100,000 in compensatory damages to the three former employees, and enjoins defendant from discrimination on the basis of national origin or religion, from harassing any Arab or Muslim employee, from tolerating a work environment that is hostile to Arab or Muslim employees, and from retaliation.

d. Religious Discrimination

(1) Hiring

In *EEOC v. 704 HTL Operating, LLC, and Investment Corporation of America, d/b/a MCM Elegante Hotel*, No. 1:11-cv-00845 (D.N.M. Nov. 15, 2013), EEOC alleged that hotel owners failed to accommodate an applicant's Muslim religious beliefs and practices, and failed to hire and/or discharged her because of her religion or in retaliation for opposing their failure to accommodate. The applicant is a practicing Muslim who wears a hijab – a scarf covering her hair -- as part of her religious observance. She interviewed for a housekeeping position at defendants' MCM Elegante Hotel in Albuquerque, New Mexico, on March 3, 2010, while wearing a hijab. On March 12 she was told she was hired and to report to work on March 15. When she reported to work wearing a hijab, defendants' executive housekeeper told her: "Take off that thing from your head." The applicant responded that wearing the hijab was part of her religion, and was referred to defendants' local human resources manager. The human resources manager told her she could not work while wearing a hijab, and said that she did not want customers, who have varying religious beliefs, to see the applicant covering her head in any way. A 2-year consent decree provides $10,000 in backpay and $90,000 in compensatory damages to the rejected applicant and prohibits defendants from religious discrimination and retaliation.

(2) Reasonable Accommodation

In *EEOC v, United Parcel Service, Inc.*, No. 2:12-cv-07334 (D.N.J. Nov. 1, 2013), EEOC alleged that the international package delivery service failed to reasonably accommodate the religious beliefs of a Jehovah's Witness and discharged him because of his religion. The employee was hired as a part-time truck loader/unloader at defendant's Saddle Brook, New Jersey, facility, and following a few days of orientation in April 2011, he was told that his first shift was scheduled for 7 p.m. to 1 a.m. on Sunday, April 17. The employee's religious beliefs required that he observe the Memorial of Christ's Death, an annual religious service held by his congregation, which was scheduled to begin at 9 p.m. on April 17 and last for approximately 30 minutes. He informed the orientation instructor of the conflict and requested as alternatives that he be permitted to begin work another day, attend the ceremony and begin work immediately thereafter, or begin work as scheduled and take an hour leave and then return to work. Defendant denied the requests, and when the employee attended the Memorial Service instead of reporting to work, he was fired. A 3-year consent decree provides the discharged employee $6,415 in backpay and $63,585 in compensatory damages, and enjoins defendant from failing to reasonably accommodate employees' religious beliefs or practices, and from retaliation.

(3) Equal Pay Act

In *EEOC v. Harmony Public Schools d/b/a Harmony Science Academy (Austin)*, No. 1:12-cv-01003 (W.D. Tex. March 11, 2014), EEOC alleged that an operator of publically funded charter schools in the greater Austin, Texas, area violated the Equal Pay Act (EPA) by paying a female teacher less than a male teacher performing the same or substantially equal work, and failed to renew her teaching contract because she opposed the wage disparity. The lawsuit was consolidated with a Department of Justice suit alleging that defendant violated Title VII by failing to renew the teacher's contract because she complained of sex- and national origin (American)-based pay discrimination. The teacher taught art for 5 years at defendant's Harmony Science Academy (Austin), and was earning $40,000 annually in 2010. She met the State's "Highly Qualified" teacher criteria, had a B.F.A. in Art Education and a State of Texas teaching certificate, and acted as a "cluster lead teacher" providing training for area art teachers. In 2010, defendant hired a male applicant from Turkey (through the H-1B Visa Nonimmigrant Worker program) to teach art at another Austin area charter school at an annual salary of $44,000. The male teacher had no previous teaching experience and was not certified. In May 2010 during an annual contract negotiation meeting with the school principal, the female teacher requested that defendant pay her a salary equal to that of the recently hired male art teacher. The principal refused, and the teacher told him she

believed defendant was discriminating against women and American workers by paying them less than Turkish men. Two weeks later defendant informed the teacher that it would not renew her contract. A 2-year consent decree resolving both suits provides the female teacher $125,000 ($100,000 in compensatory damages under Title VII and $25,000 in back wages under the EPA and Title VII), and enjoins defendant from violating the EPA or Title VII at schools in the Harmony Austin Cluster.

In *EEOC v. Market Burgers, LLC, d/b/a Checkers*, No. 2:13-cv-04651 (E.D. Pa. April 1, 2014), EEOC alleged that a Checkers fast food restaurant franchise in West Philadelphia, Pennsylvania, paid female employees less than male employees doing substantially equal work, and suppressed female employees' wages through discriminatory job assignments. From at least 2009, defendant paid female cashiers/sandwich makers less than males in the same job ($7.25 an hour compared to $7.50 or more) and assigned female employees fewer work hours than males (25 hours per week compared to 30-40 hours). A 3-year consent decree provides a total of $100,000 to current and former female employees identified by EEOC, and enjoins Title VII discrimination in the compensation, terms, conditions, or privileges of employment of female employees and enjoins violations of the Equal Pay Act. Defendant will raise the hourly wages of female cashiers/sandwich makers at defendant's Philadelphia Checkers to the same level as male employees with similar seniority.

In *EEOC v. Royal Tire, Inc.*, No. 0:13-cv-01516 (D. Minn. July 31, 2014), EEOC alleged that a provider of transportation products and services throughout the Upper Midwest subjected a female employee to gender-based wage discrimination when it paid her lower wages than it paid a male employee who had previously held the same position she did. The female employee worked as a human resources assistant at defendant's St. Cloud, Minnesota, headquarters. Prior to her employment with defendant, she had held high positions at a number of large retail establishments, but had taken a break in her career to raise her daughter. In January 2008, she was promoted to director of human resources after the male incumbent was terminated; however, she was paid $35,000 less per year than her predecessor, and $19,000 less than the minimum salary for the position set under defendant's compensation system. A 3-year consent decree provides $182,500 to the female employee, enjoins defendant from sex discrimination in violation of Title VII and from paying men and women different wages for doing substantially equal work in violation of the Equal Pay Act, and prohibits retaliation under Title VII and the EPA. Defendant will conduct a compensation analysis, and if the review reveals any pay disparity that would violate the EPA, defendant will immediately increase the salary of the lower paid employee.

2. Age Discrimination in Employment Act

a. Hiring

In *EEOC v. Ruby Tuesday, Inc.*, No. 2:09-cv-01330 (W.D. Pa. Dec. 9, 2013), EEOC alleged that a nationwide chain of over 600 casual dining restaurants failed to hire applicants age 40 and older at five restaurants in western Pennsylvania and one restaurant in eastern Ohio, and failed to maintain employment records as required by the ADEA. In 2005, defendant commenced a corporate image redo to present a "fresh and contemporary" look. General managers were instructed to look for "Victoria's Secret" applicants and applicants who were "young" and "fresh." From January 2007 through February 2009, of 623 hires at the 5 Pennsylvania restaurants, none of the hires for front-of-the-house (FOH) positions (servers, host/hostesses, bartenders) and only 12 of the hires for back-of-the-house (BOH) positions (cooks, dishwashers) were age 40 or older. At the Ohio restaurant during the same period, of 157 hires, only 8 FOH and 9 BOH hires were 40 or older. Defendant failed to retain all applications for nonhires. A 3½-year consent decree provides $575,000 in backpay, interest, and statutory damages to rejected age 40 and older applicants; enjoins age discrimination and retaliation; and requires compliance with the recordkeeping requirements of the ADEA and EEOC's regulations. Defendant will make good faith, reasonable efforts to hire individuals age 40 and older for positions at the six restaurants at a percentage equal to the applicant flow for each position, and will make good faith, reasonable efforts to broaden the pool of age 40 and older applicants for restaurant positions through a variety of actions specified in the decree. Defendant will report to EEOC semiannually on the ages of applicants and hires.

In *EEOC v. Bay State Milling Co.*, No. 2:12-cv-14439 (S.D. Fla. Dec. 10, 2013), EEOC alleged that a major flour and grain producer denied a job to a 52-year-old applicant because of his age. In January 2011, in response to a job posting for a miller position on defendant's website, an individual with over 20 years of experience in the milling industry, including employment with defendant from 1995-97, faxed a copy of his resume to defendant's flour mill in Indiantown, Florida. The job posting stated that miller and milling experience were preferred, and listed a number of supervisory responsibilities. The day after faxing his resume, the applicant called the Indiantown facility's plant manager to discuss his qualifications and inform him he would be traveling to Florida and would like to stop by and discuss the position. The plant manager said he did not want to waste the applicant's time, because he was looking for a younger man with maybe a couple of years of experience who could be groomed for the plant manager job. Defendant hired a 23-year-old with limited experience for the miller job at the Indiantown facility. A 2-year consent decree provides $80,185.66 in

monetary relief to the 52-year-old applicant and enjoins defendant from considering age as a factor when making hiring decisions.

b. Discharge

In *EEOC v. DSW, Inc.*, No. 1:14-cv-07153 (N.D. Ill. Sept. 19, 2014), EEOC alleged that a national retailer of designer shoes terminated employees over age 40 in its Midwest region and Columbus, Ohio, home office because of their ages. EEOC alleged that beginning in 2005-06, in an attempt to remake defendant's image as fashionable and young, defendant's president and upper level management directed managers to target older store managers and headquarters employees for discharge. EEOC also alleged that managers were terminated for resisting or refusing defendant's directives to get rid of the older workers and replace them with younger employees. A 3-year consent decree, filed contemporaneously with EEOC's complaint, provides $900,000 in monetary relief: 7 individuals who filed charges with EEOC will receive amounts ranging from $91,100 to $4,500, split equally between backpay and nonwage recoveries; 1 person will receive $25,000, half as backpay and half as nonwage recovery; and 101 other terminated employees will receive $4,500 each in backpay. The decree enjoins defendant from discrimination because of age, and prohibits retaliation.

3. Americans with Disabilities Act

a. Hiring

In *EEOC v. Pace Solano,* No. 2:12-cv-01823 (E.D. Cal. Oct. 3, 2013), EEOC alleged that a Solano County, California, nonprofit provider of daycare services to adults with developmental disabilities denied an applicant a job because of impairments to her left hand and arm. In June 2009, the applicant was offered a position that involved assisting in the personal care of clients. Her preemployment physical examination included a series of tests to assess a candidate's ability to meet the physical requirements of the position, all of which the applicant passed. During the testing, the applicant disclosed her partial hand paralysis to the health provider, who reported the information to defendant. A few weeks later, defendant withdrew its job offer, citing the results of the physical exam. A 5-year consent decree provides $130,000 to the rejected applicant and enjoins defendant from disability discrimination. Six months after the entry of the decree and every year thereafter, defendant will report to EEOC on postoffer applicants rejected for hire based on the results of their preemployment medical exam, with an explanation for each rejection.

In *EEOC v. Beverage Distributors Co., LLC,* No. 1:11-cv-02557 (D. Colo. Dec. 9, 2013), EEOC alleged that a distributor of beer, wine, and spirits denied an employee a position as a night warehouse loader at its Aurora, Colorado, facility due to his vision impairment. The employee, who is legally blind (visual acuity of 20/250 in one eye and 20/300 in the other) due a congenital vision disorder, was hired by defendant in December 2003 as a driver helper. In early 2008, defendant decided to use contract laborers to perform the driver helper duties, and eliminated the position. The visually impaired employee applied for a night warehouse loader job, which involved loading heavy boxes and bear kegs onto trucks. He was offered the position, but the offer was withdrawn following a medical examination required of all hires and transfers. Defendant said it believed that due to the employee's poor eyesight he would not be able to avoid forklifts and could hurt himself by tripping over pallets. Following a 4-day trial in April 2013, the jury found that defendant rejected the employee for the night warehouse loader position because of his disability and awarded him backpay of $132,347. In a December 2013 order, the court added interest of 8%, compounded annually, to the backpay, and directed that the employee be reinstated to the position of night warehouse loader with retroactive seniority.

In *EEOC v. Osceola Community Hospital d/b/a Bright Beginnings of Osceola County*, No. 5:12-cv-04087 (N.D. Iowa Feb. 28, 2014), EEOC alleged that a hospital in Sibley, Iowa, that operates a childcare center for children ages 6 weeks to 12 years rejected an applicant for positions at the center because of her disability, cerebral palsy, and because it regarded her as disabled. The applicant has a noticeable limp and her right foot is turned in, which affects her mobility and balance. She worked at the childcare center from 1995 to 2000, and began volunteering there in 2007. In November 2007 and September 2008, she applied and was considered for separate paid childcare positions. She was not interviewed or selected for either job, and complained to the hospital's CEO. The hiring decisions were then discussed at a hospital board meeting, and a board member expressed concern that defendant could be sued if the applicant dropped a child. The CEO admitted she was concerned that the applicant would not be able to handle an emergency situation, such as a tornado or fire, and believed that the applicant would be better working exclusively with older children. A 2-year consent decree provides $75,000 to the rejected applicant and enjoins defendant from disability discrimination in hiring and from failing to provide reasonable accommodations to qualified applicants and employees.

In *EEOC v. American Tool & Mold, Inc.*, No. 8:12-cv-02722 (M.D. Fla. April 16, 2014), EEOC alleged that a Clearwater, Florida, designer and manufacturer of molds for injection plastics withdrew a conditional offer of employment to a person it had recruited for a project engineer position, because it regarded him as disabled due to

prior back surgery. The person recruited was offered the position in October 2009 subject to a medical screening, which was performed by an outside clinic. After learning that the person had had surgery in 2003 to repair an injury to his lumbar spine, the clinic refused to complete the screening process without a statement from the surgeon that the person had no permanent restrictions. Despite receiving medical records from the hospital where the surgery was performed and a report from an examining physician that the person had no limitations or work restrictions, the clinic determined that it had not received "appropriate medical documentation from the surgical team." The court granted summary judgment on liability to EEOC, finding as a matter of law that defendant regarded the person as disabled. The court said it was undisputed that defendant withdrew the job offer due to an inability to produce records of the person's 2003 back surgery. The court entered a stipulated final judgment and permanent injunction awarding the person denied the project engineer position $25,000 in backpay and $125,000 in compensatory and punitive damages. The court permanently enjoined defendant from withdrawing an offer of employment based solely on an applicant's failure to provide a medical release regarding treatment for a previous injury or disability.

In *EEOC v. Professional Freezing Services, LLC,* No. 1:13-cv-04183 (N.D. Ill. April 15, 2014), EEOC alleged that a provider of cooling storage services withdrew a job offer to a person because he had prostate cancer. In June 2010, the vice president of a cold storage business in a Chicago, Illinois, suburb asked the business' warehouse manager and other employees to work with him at a similar business he was starting up in southwest Chicago. The warehouse manager agreed and performed some work for defendant in August and September 2010 while still at his current employer. In November 2010, the warehouse manager was diagnosed with prostate cancer and informed defendant's owner of his condition. The warehouse manager underwent treatment, and in January 2011, told defendant's owner he was ready to begin work. Defendant never hired him. Defendant's owner told employees the warehouse manager would be in diapers at work and would pull the company down due to the cost of insurance. A 2-year consent decree provides the warehouse manager $80,000 in damages and enjoins defendant from disability discrimination and retaliation.

In *EEOC v. Genesis HealthCare, LLC, and 84 Cold Hill Road Operations, LLC, d/b/a Holly Manor Center Nursing Home*, No. 2:14-cv-00316 (D. N.J. Sept. 3, 2014), EEOC alleged that Genesis Health Care, which operates over 400 skilled nursing centers and assisted living/senior facilities in 28 states, rescinded a job offer to a deaf applicant for an assistant chef or chef position at its Holly Manor Center Nursing Home in Mendham, New Jersey, because of the applicant's disability. In February 2012, the applicant interviewed with defendants' food service director and hospitality director, and was

offered and accepted two part-time jobs pending completion of a background check. After not hearing from defendants for a week, the applicant contacted defendants' human resources manager, who asked him to come in for a second interview. Although during the initial interview defendants' representatives and the applicant discussed communication challenges associated with the applicant's deafness, and potential accommodations, at the applicant's March 2012 interview with defendants' facility administrator and human resources manager, he again was asked about his ability to communicate with coworkers. A week after the second interview, defendants' human resources manager told the applicant defendants had decided to pursue more experienced candidates. A 3-year consent decree provides $3,200 in backpay and $71,800 in compensatory damages to the rejected applicant and enjoins defendants from disability discrimination in hiring and from retaliation.

b. Reasonable Accommodation

In *EEOC v. Alorica, successor in interest to Ryla Teleservices, Inc.*, No. 1:11-cv-02608 (N.D. Ga. Dec. 10, 2013), EEOC alleged that a provider of call center services failed to reasonably accommodate an employee's bipolar disorder, and discharged her because of her disability. The employee was hired in April 2009 as a customer service representative at Ryla Teleservices' Kennesaw, Georgia, facility. On February 16, 2010, she was diagnosed with bipolar disorder, and was granted short term disability leave from February 22 to March 16, 2010, to adjust to her medication and obtain therapy. Defendant's medical insurer approved an extension of the employee's leave to April 12, 2010, but Ryla terminated her on March 23, 2010, saying she violated its attendance policy by not returning to work on March 16. A 21-month consent decree provides $135,000 to the former employee and prohibits disability discrimination. The decree applies to the Kennesaw, Georgia, facility of Alorica, Inc., a provider of telesales and data services that acquired Ryla after the employee's discharge.

In *EEOC v. Time Warner Cable, Inc.*, No. 2:13-cv-00478 (E.D. Wis. March 6, 2014), EEOC alleged that a national provider of cable television and related services failed to reasonably accommodate an employee's foot impairments and discharged him because of his disability. The employee worked as a cable tap auditor/investigator at a facility in Milwaukee, Wisconsin. He was responsible for investigating theft of defendant's cable services, which at times required him to climb utility poles. In January 2009, the employee injured his right foot, ankle, and leg at work. In June 2010, after 1½ years of recovery (which included surgeries and a combination of worker's compensation leave and light duty), the employee's doctor released him to return to work with a permanent climbing restriction. Defendant refused to assign the employee exclusively to auditing work in buildings where climbing was not required, failed to consider him for alternate

positions for which he was qualified, and discharged him in July 2010. An 18-month consent decree, applicable to defendant's Milwaukee office, provides $130,000 to the former employee (divided equally between backpay and compensatory damages) and enjoins defendant from disability discrimination, failure to provide reasonable accommodations, and retaliation.

In *EEOC v. Upper Chesapeake Health System, Inc.*, No. 1:13-cv-02846 (D. Md. April 15, 2014), EEOC alleged that an integrated healthcare system serving northeastern Maryland failed to reasonably accommodate an employee with Usher's syndrome, a rare genetic disorder that causes gradual hearing and vision loss, and denied her accommodations and refused to rehire her because she had requested an accommodation and filed charges with EEOC. The employee worked at defendant's Upper Chesapeake Medical Center as a pulmonary function technologist, a job that involved preparing rooms and patients for diagnostic testing of respiratory conditions. Between January and August 2009, defendant placed the employee on leave and required her to undergo a fitness for duty examination because of concerns about her physical ability to do her job. Defendant made no efforts to reassign the employee to a job she could perform with her impairments until a week prior to terminating her in August 2009, when she was interviewed for an entry-level clerical position that she was not awarded. After filing disability discrimination charges with EEOC in July 2009 and January 2010, the (now former) employee applied in July 2010 for a patient advocacy position with defendant. She had the requisite experience for the job and was physically capable of performing it, but defendant refused to hire her. A 3-year consent decree provides the former employee $80,000 in backpay and $100,000 in compensatory damages and enjoins defendant from violating Titles I and V of the ADA. Defendant will provide the former employee with a positive letter of reference.

In *EEOC v. Lifecare Medical Services, Inc.*, No. 5:13-cv-01447 (N.D. Ohio May 29, 2014), EEOC alleged that a provider of medical transportation services in northeast, central, and southwest Ohio failed to reasonably accommodate an employee's multiple sclerosis (MS), and discharged him because of his disability. The employee was hired in October 2009 and worked as an EMT-Paramedic transporting patients and providing some medical care. He was diagnosed with MS in April 2009, and due to illnesses caused by his MS occasionally missed work or left early. Defendant had a no-fault attendance policy, and denied the employee's requests for additional attendance points to accommodate his MS. In October 2010, defendant discharged the employee under its attendance policy after he missed 4 days of work and left early seven times over the course of a year due to illness associated with his MS. A 3-year consent decree provides $8,400 in backpay and $64,100 in compensatory damages to the former employee, and enjoins defendant from violating the provisions of Title I of the ADA. Defendant will

implement a revised "Attendance and Punctuality" policy that will include a procedure for invoking requests for a reasonable accommodation and will state that exceptions will be made to the policy when required under the ADA.

In *EEOC v. Princeton Healthcare System*, No. 3:10-cv-04126 (D.N.J. June 26, 2014), EEOC alleged that a hospital in Princeton, New Jersey, maintained attendance and leave policies that denied reasonable accommodations to employees with disabilities. Defendant's policies provided for progressive discipline for specified absences; termination of employees ineligible for Family and Medical Leave Act (FMLA) leave who could not return to work after 7 consecutive calendar days of absence; and termination of employees unable to return to work after exhausting their 12 weeks of FMLA leave. Defendant did not consider or allow for reasonable accommodation of disabled individuals who required more leave than was permitted under its policies. A 4-year consent decree provides $755,000 in backpay and $595,000 in compensatory damages to be distributed to a class of 23 individuals as determined by EEOC. The decree enjoins defendant from the following: determining eligibility for a leave of absence or time off based solely on the FMLA; failing to engage in the interactive process with employees with a disability; requiring employees returning from disability leave to present a fitness for duty certification stating they are able to work without restrictions; and commingling employee medical records with personnel files.

c. Discharge

In *EEOC v. Norfolk Southern Railway Company*, No. 1:13-cv-03126 (N.D. Ga. May 16, 2014), EEOC alleged that a railway operating in 22 Eastern States terminated an employee because of his disability, record of a disability, or being regarded as disabled. The employee worked as a laborer and machine operator, repairing tracks, crossties, and related components on defendant's rail lines in various States. The work is labor intensive and requires lifting up to 80 pounds. In February 2010, the employee was diagnosed with moderate to severe multilevel degenerative disc disease and went out on medical leave. In June 2010, after undergoing medical procedures and physical therapy, he was released by his physician to return to work without restriction. However, after reviewing his medical records, and without conducting a physical examination, defendant's reviewing physician determined that the employee's "present medical condition . . . does not permit safe performance of the essential functions of [his] job," and refused to allow him to return. A 3-year consent decree provides the former employee $50,000 in backpay and $60,000 in compensatory damages and prohibits disability discrimination.

In *EEOC v. Christian Care Center of Johnson City, Inc.*, No. 2:12-cv-00207 (E.D. Tenn. May 8, 2014), EEOC alleged that a long-term skilled care nursing home in Johnson City, Tennessee, discharged an employee because he was HIV positive. The employee was hired in September 2009 to work as a licensed practical nurse. His duties consisted of preparing and administering medications and insulin shots, charting patient activities, supervising certified nursing assistants, and keeping doctors updated on patient status. The employee told some of his coworkers he was HIV positive, and in October 2009, he was asked by defendant's administrator if he was HIV positive. The employee answered "yes" and was discharged. A 2-year consent decree provides the former employee $90,000 (40% as wage income and 60% as damages) and prohibits defendant from disability discrimination and retaliation.

In *EEOC v. Walgreen Company*, No. 3:11-cv-04470 (N.D. Cal. July 1, 2014), EEOC alleged that the national drugstore chain failed to accommodate an employee's insulin dependent diabetes and discharged her because of her disability. In September 2008, while working at a cash register at a defendant store in south San Francisco, the employee began to experience a hypoglycemic attack and grabbed a small bag of potato chips nearby (valued at $1.39) and ate a few quickly to raise her blood sugar level. (The employee normally kept a piece of candy in her pocket for these situations, but did not have candy that day.) The employee paid for the chips during her break, and told the store manager that she took the chips because she didn't feel well and that it was "related to [her] condition." When the employee returned from a prescheduled vacation, defendant's loss prevention supervisor asked her to provide a written statement about the chips incident, and the employee, whose first language is Spanish, wrote in English, "my blood sugar low not have time." Defendant discharged the employee -- who had worked for defendant for almost 18 years and had no disciplinary record -- for violating its no-tolerance rule against "consuming merchandise without paying for it." A 3-year consent decrees provides the former employee $135,000 in compensatory damages and $45,000 in backpay and enjoins defendant from discriminating based on disability, including failing to reasonably accommodate.

4. Age Discrimination in Employment Act and Americans with Disabilities Act

In *EEOC v. DynMcDermott Petroleum Operations Company*, No. 1:10-cv-00510 (E.D. Tex. April 16, 2014), EEOC alleged that a provider of maintenance and operations support for a Department of Energy oil reserve project failed to hire an applicant for a maintenance planner/scheduler position because of his age and his wife's disability. The applicant worked for defendant for 4½ years at its Big Hill site in Jefferson County, Texas, before being laid off in 2003; for the first 2½ years he had held a maintenance planner/scheduler position. At the invitation of his former supervisor, he applied in

February 2008 for an open maintenance planner/scheduler position at the Big Hill site. He was then 56 years old and his wife had been diagnosed with cancer and required ongoing care. During the applicant's interview, he was questioned about his wife's condition and the effect it would have on his attendance. Defendant hired a less qualified 35-year-old individual for the job. Prior to the 56-year-old applicant's interview, the manager/director of the Big Hill site told subordinate managers that the applicant should not be hired because he probably would not work much longer and would miss work to attend to his wife. A 24-month consent decree provides $160,000 to the rejected applicant and enjoins age and disability discrimination.

5. Genetic Information Nondiscrimination Act

In *EEOC v. Founders Pavilion, Inc.*, No. 6:13-cv-06250 (W.D. N.Y. Jan. 9, 2014), EEOC alleged that a nursing and rehabilitation center located in Corning, New York, violated the Genetic Information Nondiscrimination Act (GINA) by requiring applicants and employees to provide information about their family medical history. The suit also alleged that defendant discharged two employees because it regarded them as disabled, and refused to hire a female applicant, withdrew an offer of employment to another female applicant, and terminated a female employee because of their pregnancies. Pursuant to New York State law, defendant was required to conduct preemployment and annual medical examinations of all employees with patient contact; defendant also conducted exams upon an employee's return from medical leave. During the period November 2009 through September 2011, the medical exams were administered by a third party that required each person examined to complete a form that included a section requesting information about various medical conditions of family members, such as stroke incidents, cancer, high blood pressure, diabetes, heart disease or heart attack, and "other." A 5-year consent decree provides $259,600 in backpay and compensatory damages to five individuals who filed EEOC charges under GINA, the ADA, or Title VII (amounts specified in the decree) and $110,400 in compensatory damages equally divided among 138 individuals who were required to provide family history information in violation of GINA. Defendant sold its nursing facility in July 2013, but will be subject to extensive injunctive relief if it resumes any business operations during the term of the decree.

6. Retaliation

a. Conditioning Benefits on Waiver of Charge-Filing Rights

In *EEOC v. Cardiac Science Corporation*, No. 2:13-cv-01079 (E.D. Wis. July 28, 2014), EEOC alleged that a Wisconsin-based global manufacturer and marketer of cardiology

products and services maintained a policy of denying or discontinuing severance payments to employees and former employees who file EEOC charges. Fifty-seven employees laid off by defendant in October 2012 were required as a condition of receiving severance benefits to sign an agreement that released defendant from all employment claims, and contained the following language: "Employee has not filed, and will not file, any . . . administrative complaints or charges arising from or relating to employment with, or termination of employment from, [defendant]." A 2-year consent decree provides $50,000 ($2,640 for lost severance and $47,360 for other claimed damages) to an individual who had filed an EEOC race and disability discrimination charge about 6 weeks prior to the layoff and did not sign the severance agreement. The decree enjoins defendant from unlawful discrimination or retaliation under Title VII and the ADA. Defendant will not include in future severance agreements any provision that prohibits the signer from filing a charge of discrimination with a government agency. Defendant will not challenge as untimely charges filed by the 56 other laid off employees if the charge is filed within 180 days of entry of the decree and alleges discrimination on or after a date 300 days prior to October 19, 2012. Defendant will provide EEOC contact information for the class members so that EEOC can notify them of the tolling period.

b. Discharge

In *EEOC v. Judicy, Inc., d/b/a Labor Finders*, No. 2:09-cv-00163 (N.D. Ga. Feb. 5, 2014), EEOC alleged that a franchisee of national staffing agency Labor Finders, operating about 15 offices in Georgia and northern Florida, discharged an employee in retaliation for her complaints of sexual harassment. The employee was hired as an administrative assistant at defendant's Cumming, Georgia, location in October 2007. In December 2007, she complained to her district manager and the police that she was receiving sexually explicit telephone calls from her supervisor. She was terminated 3 days later for alleged misconduct, including falsely accusing a coworker of making harassing calls, refusing to participate in defendant's investigation of the calls, and lying on her employment application. The supervisor later pled guilty to criminal charges based on the harassing calls. A 2-year consent decree provides $150,000 to the former employee and prohibits retaliation under Title VII.

In *EEOC v. Goodwill Industries of Southwest Oklahoma and North Texas, Inc.*, No. 5:11-cv-01043 (W.D. Okla. July 22, 2014), EEOC alleged that an operator of community services programs in Oklahoma and Texas terminated its vice president of adult daycare and youth services because she gave deposition testimony in an employment discrimination lawsuit brought against defendant. In 2008, defendant's former interim CEO filed a Title VII and ADEA suit against defendant alleging that she was denied promotion to

the permanent CEO position because of her age (over 40), race (black), and sex (female). In March 2010, the vice president provided deposition testimony in the interim CEO's suit to the effect that the successful candidate (a white male younger than the interim CEO) had engaged in discriminatory and retaliatory practices after he took over as defendant's CEO. The interim CEO's lawsuit was dismissed in early June 2010, and the vice president was discharged 2 weeks later for alleged misconduct, including "unsubstantiated racial and sexist accusations against supervisor and peers" and "undermining the authority of her supervisor." A 2-year consent decree provides $100,000 to the former vice president, and prohibits defendant from retaliation for opposing discrimination, or participating in an investigation, under any of the statutes EEOC enforces.

In *EEOC v. Turner Machine Company, Inc.*, No. 3:14-cv-01115 (M.D. Tenn. July 31, 2014), EEOC alleged that a producer of automated machines for automobile assembly lines, discharged an employee for filing an EEOC charge. The employee was hired as a mechanical engineer at defendant's Smyrna, Tennessee, facility in June 2011. Every morning defendant's president, a Christian, required all of defendant's 30 to 40 employees to attend a "huddle," where they were expected to share positive news from their personal lives; many employees discussed church activities, and the huddles sometimes ended with a prayer. Employees also were assigned books to read, some of which featured a Christian perspective, and the books were discussed at the huddles. Although the newly hired mechanical engineer initially was excused from the huddles after telling his supervisor he had an anxiety disorder that prevented him from participating, defendant informed him in December 2011 that his participation was mandatory. In January 2012 the mechanical engineer filed an EEOC charge alleging religious and disability discrimination. His charge was resolved on March 13, 2012, through a mediation agreement that relieved him from participation in the huddles and from receiving book assignments. Defendant terminated the employee 10 days later, citing a business restructuring. A 4-year consent decree provides $55,000 in backpay and $25,000 in compensatory damages to the discharged mechanical engineer and enjoins defendant from retaliation under Title VII.

In *EEOC v. Izza Bending Tube & Wire, Inc.*, No. 0:13-cv-02570 (D. Minn. Sept. 18, 2014), EEOC alleged that a Buffalo, Minnesota, provider of specialized metal fabrication services demoted an employee and reduced her salary in retaliation for opposing race discrimination, and discharged her because of her opposition conduct and for filing an EEOC charge. The employee was hired as an office worker in 2010, and by May 2011 had received two large salary increases and a promotion to production supervisor. In August 2011, she recommended to defendant's coowner that a black temporary employee be offered a permanent position. The coowner responded that he "had not

had good luck with niggers" and told her to get rid of the black employee. The production supervisor refused to discharge the employee and a few days later she was demoted and her salary was reduced by $252 a week. She filed a discrimination charge in September 2011, and a few days after defendant received notice of the charge, defendant's owners told her that her salary would be reinstated if her attitude improved. In October 2011, the owners told the former production supervisor her demotion was permanent and she would receive no salary increases; she was laid off on December 15, 2011. A 1-year consent decree provides $30,000 in backpay and $15,000 in compensatory damages to the former employee and enjoins defendant from retaliation.

C. Appellate and Amicus Cases

1. EEOC Conciliation

EEOC v. Mach Mining LLC, 738 F.3d 171 (7th Cir. Dec. 20, 2013)

EEOC alleged in this Title VII action that defendant denied women coal mining positions because of their sex. Following its investigation of a sex discrimination charge filed by a rejected female applicant, EEOC found reasonable cause to believe that defendant had denied a number of women the opportunity to work in its mines. EEOC attempted to resolve the matter through its administrative conciliation process, but those efforts were unsuccessful. EEOC filed suit, and defendant asserted as an "affirmative defense," warranting dismissal, that EEOC failed to conciliate in good faith. EEOC moved for partial summary judgment, asking the court to rule as a matter of law that an alleged failure to conciliate cannot constitute an affirmative defense to an EEOC discrimination suit. The district court denied EEOC's motion, reasoning that courts should evaluate conciliation to the extent needed to "determine whether EEOC made a sincere and reasonable effort to negotiate." The court, however, certified the question for interlocutory appeal, and the Seventh Circuit accepted the appeal.

The court of appeals held that purported EEOC failures in the conciliation process do not constitute an affirmative defense to EEOC suits on the merits of discrimination claims. The court said that the text of Title VII does not expressly authorize review of EEOC's conciliation efforts, and in fact the statute gives the agency complete discretion to determine whether a settlement offer is acceptable. The court criticized the searching review of conciliation approved by other circuits, saying that such review interfered with EEOC's enforcement efforts and also conflicted with the statute's confidentiality requirements. Finally, the court said that even assuming such a defense were available, the remedy for any deficiency in the conciliation process would not be dismissal of

EEOC's suit, but "more process," such as a short stay to allow the parties to pursue conciliation further.

2. Joint Employer

EEOC v. Skanska USA Building, Inc., 550 F.App'x 253 (6th Cir. Dec. 10, 2013) (unpublished)

In this Title VII race discrimination and retaliation action, EEOC sought relief for three African American buckhoist operators working at a construction site managed by defendant. The buckhoist operators' direct employer, C-1, hired and paid them, but C-1 had virtually no presence at the construction site; all on-the-job supervision was performed by defendant employees or by other subcontractors working at defendant's direction and C-1 followed without question defendant's directions to remove employees. The district court granted summary judgment to defendant based on its finding that EEOC had not produced sufficient evidence to present a jury question on whether defendant acted as a joint employer of the buckhoist operators. The court acknowledged that the joint employer doctrine is available in Title VII cases, but applied the substantive legal standard—the common law agency test—from labor law cases addressing employee/independent contractor issues. The court found that defendant could not be a joint employer of the buckhoist operators because the degree of oversight defendant provided was insufficient and because defendant did not hire, fire, or compensate C-1 employees.

EEOC appealed and the Sixth Circuit reversed and remanded. The court held that the joint employer theory of liability can apply in Title VII cases, resolving what it characterized as an open question in the circuit. The court then said that the standard for joint employment under Title VII is the same as the circuit has applied in the National Labor Relations Act (NLRA) context. Accordingly, the court observed, "[t]o determine whether an entity is the plaintiff's joint employer, we look to an entity's ability to hire, fire or discipline employees, affect their compensation and benefits, and direct and supervise their performance." The court held that on the facts of the present case, the NLRA test weighed in favor of a finding that defendant was a joint employer of the buckhoist operators.

3. Limitations Periods

Ryals v. American Airlines, Inc., 553 F.App'x 402 (5th Cir. Feb. 3, 2014) (unpublished)

An Ethiopian-born black female aircraft maintenance technician alleged that beginning in early 2004 and continuing at least until October 2006, supervisors and coworkers subjected her to harassment due to her race, national origin, and sex, and in retaliation for her complaints about harassment. The district court granted defendant's motion for summary judgment, holding that harassment occurring outside the applicable 300-day charge-filing period can be considered only if the plaintiff can demonstrate that she did not recognize that she was being discriminated against at the time of the harassment. The court also excluded a statement by plaintiff, attached to her sworn charge, that described actions and statements plaintiff witnessed, on the ground that the statement was hearsay and would not be admissible at trial.

Plaintiff appealed to the Fifth Circuit, and EEOC filed an amicus curie brief arguing that plaintiff could challenge all of the harassing conduct as long as acts occurring within 300 days of her charge were part of the same hostile work environment as the earlier conduct. EEOC also argued that the (unverified) statement attached to plaintiff's charge, which was referred to in the charge as providing "specifics," described events that plaintiff personally witnessed and could be considered at the summary judgment stage because its contents could be reduced to admissible form at trial. The court of appeals affirmed. The court agreed with EEOC regarding the legal standards, but it disagreed that the district court wrongfully applied those standards, concluding that the lower court did "consider all of the evidence."

Chavez v. Credit Nation Auto Sales, LLC, f/k/a Synergy Motor Co., 49 F. Supp.3d 1163 (N.D. Ga. Sept. 12, 2014)

The plaintiff in this Title VII action worked as a mechanic for a company that sells and repairs automobiles. Several months after informing her employer that she intended to transition from male to female, she was terminated when a supervisor photographed her sleeping in a car during working hours. She filed suit alleging that she was fired because of her gender. One of defendant's arguments on summary judgment was that the plaintiff did not exhaust her administrative remedies because she failed to file a charge within the 180-day limitations period. EEOC filed an amicus curie brief in the district court limited to the timely charge issue. EEOC argued that the limitations

period should be tolled because plaintiff attempted to file a charge during the 180-day period, but EEOC staff refused to accept it, believing incorrectly that transgender individuals were not covered under Title VII's sex discrimination provision.

The district court rejected defendant's exhaustion argument. Without mentioning EEOC's brief, the court said that the charge- filing period could be equitably tolled where EEOC misleads an individual regarding his or her rights. The court found that transgender individuals are protected under Title VII from discrimination based on their gender nonconformity. The court concluded, therefore, that EEOC had misled the plaintiff when it told her that she could not bring a claim for gender discrimination under Title VII, and the court tolled the limitations period on her charge. The court, however, granted defendant's summary judgment motion on the ground that plaintiff had failed to establish an issue of fact on whether defendant's proffered reason for discharging her — sleeping on the job — was pretextual.

Velazquez-Perez v. Developers Diversified Realty Corp., 753 F.3d 265 (1st Cir. May 23, 2014)

The First Circuit agreed with EEOC's position as amicus curiae that the plaintiff was entitled to Title VII's extended 300-day period to file his charge alleging that he was discharged in retaliation for complaining of sexual harassment. Title VII extends the statutory 180-day charge-filing time limit to 300 days when the individual filing a charge has "initially instituted proceedings with a State or local agency with authority to grant or seek relief" from the alleged unlawful practice. The court said that under EEOC's worksharing agreement with the Puerto Rico fair employment practices agency (ADU), submitting a charge to the EEOC automatically initiates and then immediately terminates proceedings with the ADU, thereby satisfying the "initially institutes" requirement of Title VII for the 300-day charge-filing period to apply.

The court of appeals also rejected defendant's argument that the 300-day period did not apply here because the ADU did not have authority to grant or seek relief with respect to plaintiff's retaliation charge. Puerto Rico has a law that prohibits workplace sexual harassment and specifically bars employers from retaliating against employees who assert their right to be free from workplace harassment. The court said plaintiff's entitlement to the 300-day period was not affected by the fact that until recently EEOC's regulation listing approved fair employment practices agencies had mistakenly stated that the ADU did not have authority over retaliation claims. The court said it owed no deference to EEOC's prior regulatory provision because the provision did not purport to interpret ambiguous statutory language having any bearing on the present case, but instead served as a public reference, of state and local agencies recognized by EEOC as having the authority to enforce antidiscrimination laws.

4. Proof

EEOC v. Audrain Health Care, 756 F.3d 1083 (8th Cir. June 30, 2014)

EEOC alleged in this Title VII action that defendant hospital refused to consider a male nurse for a vacant position in the hospital's operating room because of his sex. It was undisputed that when the employee approached his supervisor, who was the hiring official, about the position, the supervisor told him she would not consider him because he was a man and she wanted to fill the position with a female nurse. Accordingly, the male nurse did not apply. The district court granted summary judgment to defendant, finding that the supervisor's statement did not constitute direct evidence of sex discrimination, and that EEOC could not make out a prima facie case because the male nurse never applied for the position and, lacking operating room experience, was not qualified.

The Eighth Circuit affirmed. The court concluded that even if direct evidence of discrimination existed, EEOC had to demonstrate that the male employee suffered an adverse employment action. The court said that the employee never applied for the position and that, contrary to EEOC's position, his failure to do so was not excused. The court said that under circuit court precedent, a person who does not formally apply for the position at issue must make "every reasonable attempt to convey his [or her] interest in the job to the employer." The court said that because EEOC failed to make that showing, the district court did not err in finding that EEOC failed to establish an employment discrimination claim.

Scheick v. Tecumseh Public Schools, 786 F.3d 523 (6th Cir. Sept. 2, 2014)

Plaintiff alleged that defendant refused to renew his contract as principal of a public high school because of his age. Plaintiff presented evidence that the day after telling him the school board wanted him to retire, the school district's superintendent told him that his employment contract would not be renewed because "they just want somebody younger" for the principal job. The district court granted summary judgment to defendant. The court said that the superintendent's statements did not constitute direct evidence of age discrimination because the term "younger" could mean the number of years plaintiff was willing to continue working; it was unclear whether the superintendent's use of the word "they" referred to the school board; and there was evidence that the superintendent, not the board, was the sole decisionmaker. The

district court said that even if the superintendent's statements were direct evidence of age discrimination, summary judgment would still be appropriate because plaintiff had not shown that defendant's reasons for not renewing his contract were pretextual.

In a decision closely tracking the arguments presented by EEOC as amicus curiae, the Sixth Circuit reversed, concluding that plaintiff had produced direct evidence of age discrimination because, if believed, the evidence would require the fact-finder to conclude that age was the "but-for" cause of plaintiff's termination. The court of appeals said, however, that there may be situations where the presence of direct evidence of age discrimination would be insufficient to defeat summary judgment, such as where there is both direct evidence of an "age-based animus" and undisputed evidence of a nondiscriminatory motive for the contested action.

Latowski v. Northwoods Nursing Center, 549 F.App'x 478 (6th Cir. Dec. 23, 2013) (unpublished)

Plaintiff, a certified nursing assistant, alleged she was subjected to sex discrimination when after she became pregnant defendant required her to obtain a doctor's note stating that she could work free of any and all restrictions, and terminated her when she did not provide the note. The district court granted summary judgment to defendant, holding that defendant's "no restrictions" policy was "pregnancy-blind" and therefore did not violate Title VII. The district court also held that the plaintiff could not establish a prima facie case of pregnancy discrimination for two reasons: first, because she had a "medical restriction," she could not show that she was qualified for her position; and second, because she could not show she was treated worse than a similarly situated comparator.

On plaintiff's appeal to the Sixth Circuit, EEOC argued as amicus curiae that: (1) the defendant's "no-restrictions" policy was not pregnancy-blind in practice because nonpregnant workers were required to provide a doctor's note only when they were unable to perform some or all of their job tasks, while pregnant employees were required to provide a note solely because they were pregnant; and (2) a reasonable jury could find that the defendant used its "no restrictions" policy as a pretext for pregnancy discrimination against the plaintiff.

The court of appeals reversed. The court said that because plaintiff conceded at oral argument that defendant's policy was facially nondiscriminatory, it would not address whether the policy itself constituted direct evidence of discrimination. The court found, however, that under the indirect method of proof generally applicable to Title VII

claims, plaintiff had adduced sufficient evidence of pregnancy discrimination to warrant a trial. The court agreed with EEOC that the district court's analysis of the prima facie case was incorrect. The court said that a plaintiff's qualifications should be assessed based on whether he or she was meeting the employer's expectations "prior to and independent of the events that led to the adverse action." Pointing to various pieces of evidence in the record reflecting antipregnancy animus on the part of the defendant's decisionmakers and managers, the court held that a reasonable jury could find that defendant's proffered rationale for terminating the plaintiff was so unreasonable that it could be a pretext for pregnancy discrimination.

EEOC v. Carroll Tire Co., 532 F.App'x 901 (11th Cir. Oct. 1, 2013) (unpublished)

In this Title VII action, EEOC alleged that defendant fired a female assistant branch manager at a store in Grovetown, Georgia, because of her sex. The district court granted summary judgment to defendant, ruling that EEOC failed to provide sufficient evidence of pretext to create a material issue of fact regarding defendant's legitimate reasons for firing the assistant manager. The court also ruled that it would not address a mixed motive theory of disparate treatment because EEOC did not plead that theory in its complaint.

EEOC appealed, and the Eleventh Circuit agreed with the agency that the district court erred when it failed to consider the evidence under a mixed motive theory. The court of appeals said that EEOC was not required to identify its method of proof in its complaint, and that it was sufficient that the agency argued its mixed motive theory at summary judgment. The court nevertheless affirmed the district court's grant of summary judgment to defendant, finding there was no genuine dispute that the person who made the decision to discharge the assistant manager – the regional manager over the store where she worked – did not act with a discriminatory motive.

EEOC v. Product Fabricators, Inc., 763 F.3d 963 (8th Cir. Aug. 15, 2014)

EEOC alleged in this ADA action that defendant fired a manufacturing supervisor in retaliation for his participation in an EEOC investigation. The manufacturing supervisor was interviewed by EEOC during its investigation of a discrimination charge filed by a former defendant employee he had supervised. On August 31, 2009, EEOC filed a lawsuit seeking relief for the former employee. The morning of September 1, 2009, defendant managers questioned the manufacturing supervisor about what he had told EEOC during its investigation of the former employee's charge, and had him sign a written acknowledgement that he had spoken to EEOC about the former employee. Later that day, defendant fired the manufacturing supervisor. The district

court granted summary judgment to defendant, concluding that EEOC had failed to produce sufficient evidence of a causal connection between the manufacturing supervisor's protected activity and his termination, and had failed to show that defendant's performance based reasons for discharging the manufacturing supervisor were pretextual.

EEOC appealed and the Eighth Circuit affirmed. The court of appeals said it was "unique to this case" that defendant had the manufacturing supervisor sign an acknowledgement regarding his EEOC interview prior to terminating him the same day. The court said, however, that it was "mere speculation" that defendant was aware of EEOC's suit before it fired the manufacturing supervisor, and said that without more, such speculation did not establish causation in satisfaction of a prima facie case of retaliation. The court also found that EEOC had failed to show that defendant's performance reasons for discharging the manufacturing supervisor were pretextual, rejecting EEOC's evidence that defendant had an established policy of issuing employees written or verbal reprimands before discharging them.

EEOC v. Kaplan Higher Education Corp., 748 F.3d 749 (6th Cir. April 9, 2014)

EEOC alleged that the defendant's practice of using credit history information as a selection criterion had a disparate impact on black applicants. The district court ruled that EEOC's proffered expert testimony was inadmissible under Fed. R. Evid. 702, and granted summary judgment to defendant due to EEOC's inability to establish impact without the expert testimony. The Sixth Circuit affirmed. The court of appeals said that EEOC's sole proof of disparate impact was statistical data compiled by its expert witness, and held that the district court did not abuse its discretion in finding the expert's proffered reports unreliable and therefore inadmissible under federal evidence rules and Supreme Court precedent. The court found that the expert's use of state department of motor vehicle color driver's license photographs to determine the race of applicants was created for purposes of the litigation, and that the expert's methodology was flawed in various respects.

See also *Ryals v. American Airlines, Inc.*, 553 F.App'x 402 (5th Cir. Feb. 3, 2014) (unpublished), at p. 29 *supra*.

5. Race Discrimination

EEOC v. AC Widenhouse, Inc., 576 F. App'x 227 (4th Cir. June 24, 2014) (unpublished)

EEOC alleged that defendant subjected two black truckdrivers to a racially hostile work environment. One of the drivers intervened adding claims that he was discharged because of his race and in retaliation for opposing race discrimination. Following a 5-day trial, bifurcated into liability and damages phases, the jury found in favor of EEOC and the intervenor on all claims, resulting in total monetary relief of $243,000 to the two individuals, including punitive damages to each of them. The district court enjoined defendant from discriminating against any person on the basis of race or in retaliation for opposing practices unlawful under Title VII. The 3-year injunction also requires defendant to implement a written antidiscrimination policy; conduct training on Title VII to all employees and to all owners involved in the company's operations; post the antidiscrimination policy and a notice to employees regarding the lawsuit; and provide EEOC with periodic reports regarding complaints about racial harassment.

Defendant appealed to the Fourth Circuit, arguing that the trial court committed errors in instructing the jury on liability for punitive damages in phase one of the trial, in refusing to admit evidence of a prior discrimination charge the intervenor filed against another employer, and in failing to curtail EEOC's closing argument, which compared the treatment of the two employees to racist conduct widely tolerated prior to passage of Title VII. The court of appeals rejected these arguments, saying that the company's challenges were without merit and that the trial court had not abused its discretion in any way in its conduct of the trial.

6. National Origin Discrimination

EEOC v. Peabody W. Coal Co., 768 F.3d 962 (9th Cir. Sept. 26, 2014)

The Ninth Circuit affirmed the district court's grant of summary judgment against EEOC on its claim that defendant violated Title VII's prohibition against national origin discrimination when it gave hiring preference for coal mining positions to Navajo applicants over other Native Americans, pursuant to two Department of the Interior (DOI)-approved leases between defendant and the Navajo Nation. The court reviewed Title VII's legislative history against the background of federal statutes enacted in the

1930s to increase tribal self-determination, and agreed with the district court that the tribal hiring preference in defendant's leases was a political classification that Title VII does not reach.

The court of appeals relied heavily on the Supreme Court's analysis in *Morton v. Mancari*, 417 U.S. 535 (1974), which upheld the Bureau of Indian Affairs' (BIA) longstanding employment preference for Native Americans in BIA jobs as rationally related to the proper fulfillment of BIA's role in implementing greater tribal self-determination. The court concluded that *Mancari*'s reasoning applied equally to differential treatment between or among particular tribes or groups of Indians. The court said that "[w]here the exploitation of mineral resources on a particular tribe's reservation is concerned, the federal government's responsibility necessarily runs to that tribe, not to all Indians." The court said that DOI's approval of mineral leases containing tribal hiring preferences was a well-established practice long predating the enactment of Title VII, and that there was no indication in the text and legislative history of Title VII that Congress viewed the statute as a recalibration of its policy toward tribal communities articulated in prior legislation.

7. Religious Accommodation

EEOC v. Abercrombie & Fitch Stores, Inc., d/b/a Abercrombie Kids, 731 F.3d 1106 (10th Cir. Oct. 1, 2013)

EEOC alleged that defendant, a national clothing retailer, failed to reasonably accommodate the religious practice of a female Muslim applicant, who wore a headscarf as part of her faith, and denied the applicant a job because of her religion. The 17-year-old applicant wore a headscarf to her interview for a sales position at a defendant store in Tulsa, Oklahoma. The interviewer assumed the applicant wore the headscarf because she was Muslim, but did not mention the headscarf during the interview. The interviewer wanted to hire the applicant, but checked with her district manager on whether the applicant's headscarf would be acceptable under the company's appearance policy. The interviewer informed the district manager that she believed the applicant was Muslim and wore the headscarf for religious reasons, but the district manager told her the applicant could not be hired because the headscarf conflicted with the company's appearance policy. The district court granted summary judgment on liability to EEOC, concluding there was no material factual dispute that

defendant failed to accommodate the applicant's religious practice of wearing a headscarf and failed to show that doing so would have been an undue hardship.

Defendant appealed and the Tenth Circuit reversed and entered judgment for defendant. The court said that because the applicant did not personally inform defendant that she had a religious practice that conflicted with the company's appearance policy, defendant did not have the requisite notice of the conflict between the applicant's religion and defendant's appearance policy. The court held that employers cannot be found liable for failing to reasonably accommodate the religious practices of applicants or employees unless the individual specifically informs the employer of the need for an accommodation—regardless of whether the employer is otherwise aware that a conflict exists and an accommodation is necessary.

8. Equal Pay Act

EEOC v. Port Authority of New York & New Jersey, 768 F.3d 247 (2d Cir. Sept. 29, 2014)

The district court dismissed on the pleadings EEOC's Equal Pay Act suit seeking relief for 14 female nonsupervisory attorneys employed in defendant's law department. The district court ruled that EEOC failed to allege a plausible EPA violation in its complaint and 47-page "Responses to Defendant's Contention Interrogatories," because EEOC failed to allege sufficient facts that the jobs performed by the female attorneys were substantially similar to jobs performed by the male attorneys offered as comparators.

EEOC appealed and the Second Circuit affirmed, agreeing with the district court that EEOC failed to allege *any* facts regarding law department attorneys' actual job duties, depriving the court of any basis for determining that the attorneys performed "equal work." The court said that the EPA's "substantially equal" work standard is demanding and that "[a] plaintiff must establish that the jobs compared entail common duties or content, and do not simply overlap in titles or classifications." The court said that EEOC's allegations that defendant required nonsupervisory attorneys to have similar experience, training, education, and ability, bar admission, and the capacity to call upon problem-solving and analytical skills and professional judgment were "bland abstractions" that "sai[d] nothing about whether the attorneys were required to perform substantially equal work." The court said that the fact that law department attorneys had the same job code, were evaluated according to the same broad criteria, were paid

according to a maturity curve, and were not limited to distinct legal divisions, demonstrated at most that they were subject to the same human resources policies.

9. Age Discrimination

EEOC v. Baltimore County, 747 F.3d 267 (4th Cir. March 31, 2014)

EEOC alleged that defendant violated the ADEA by basing employee contributions to its compulsory retirement system on an individual's age at hire, requiring larger contributions from individuals hired at older ages. Originally, employees could retire only when they turned age 65. Because the contributions of employees who were older when hired would have less time to earn interest, older hires were required to contribute a higher percentage of their salaries to the system than younger hires. For several decades, however, employees have been eligible to retire not only when they reach a certain age, but also after 20 or 30 years of service. The county, however, never changed its employee contribution rate structure to account for this service-based retirement option. The district court granted summary judgment on liability to EEOC, finding that the contribution rates were facially discriminatory.

Defendant appealed and the Fourth Circuit affirmed. The court rejected defendant's argument that the contribution rates were based on the time value of money, because the county failed to adjust the rates to account for the employees' eligibility for retirement based on years of service. The court then held that even if the county's service-based benefits qualified as "early retirement benefits" under section 623(*l*)(*1*)(*ii*)(*I*) of the ADEA, which permits employer subsidization of such benefits, that section does not permit employers to impose increasing contribution rates based on the employee's age at the time of plan enrollment.

EEOC v. Exxon Mobil Corp., 560 F.App'x 282 (5th Cir. March 25, 2014) (per curiam) (unpublished)

EEOC challenged defendant's forced retirement of several 60-year-old corporate pilots under a company rule that mirrored the Federal Aviation Administration's (FAA) age-60 mandatory retirement rule for commercial airline pilots. Defendant asserted that its rule was justified because defendant had the same safety concerns as the FAA and because there was sufficient congruity between the pilots it employed and commercial

airline pilots to establish that being under age 60 was a bona fide occupational qualification (BFOQ) for its corporate pilots.

The Fifth Circuit affirmed the district court's grant of summary judgment to defendant, finding that defendant's age-60 mandatory retirement rule was a BFOQ. On the question of congruity, the court said the differences EEOC pointed out between defendant's planes, operations, and pilot duties and those of commercial airlines were "distinctions without difference." The court also rejected EEOC's argument that the district court had improperly considered the FAA's regulations, safety objectives, and age-60 rule in its evaluation of defendant's BFOQ defense, stating that the FAA's failure to apply its age-60 rule to corporate pilots did not establish the inapplicability of the FAA's safety rationale. The court also ruled that EEOC had not raised a genuine issue of material fact regarding the alternative of individualized pilot fitness testing, stating that EEOC could not demonstrate that there was a specific means of testing that would account for every risk of sudden incapacitation, a risk that defendant had shown increases with age.

10. Disability Discrimination

Mazzeo v. Color Resolutions Int'l, Inc., 746 F.3d 1264 (11th Cir. March 31, 2014)

The plaintiff alleged in this ADA/ADEA action that he was discharged because of his disability (a herniated disc) and age. The district court granted summary judgment to defendant on plaintiff's disability claim on the ground that plaintiff had not shown he was disabled or regarded as disabled, and on his age claim on the ground that he had not presented sufficient evidence of discriminatory intent.

Plaintiff appealed, and the Eleventh Circuit reversed in an opinion consistent with the views advanced by EEOC as amicus curiae. On the ADA claim, the court held that viewed under the standards of the 2008 amendments to the ADA, the plaintiff's treating physician's affidavit sufficiently explained plaintiff's medical condition, the specific pain the condition caused, and the limitations on major life activities caused by the condition and pain. On plaintiff's ADEA claim, the court found that the district court had erroneously applied a prima facie case test applicable to reduction-in-force actions, due to the district court's finding that plaintiff had not been replaced, but rather that defendant had eliminated his position. The court of appeals instructed the district court on remand to apply the standard prima facie case test, as a reasonable jury could have

found that in giving a younger employee the consolidated position at issue, defendant replaced the plaintiff.

EEOC v. Ford Motor Co., 752 F.3d 634 (6th Cir. April 22, 2014)

EEOC alleged that defendant, an automobile manufacturer, failed to reasonably accommodate the disability of a resale steel buyer with severe irritable bowel syndrome, and terminated her in retaliation for filing an EEOC charge. The buyer asked to be allowed to telecommute, as needed, for up to 4 days a week as an accommodation for her disability. Defendant denied her request, stating that a regular and predictable schedule was part of her job requirements, and 4 months after she filed an EEOC charge defendant terminated her, ostensibly for poor performance. The district court granted summary judgment to defendant, holding that the buyer was not a qualified individual under the ADA due to her absences from work. The court further ruled that defendant's decision that telework was not a viable option was an appropriate exercise of its business judgment. The court also ruled that EEOC failed to adduce sufficient evidence to support a retaliation claim because the agency did not dispute that the buyer had various performance issues documented by defendant.

EEOC appealed and the Sixth Circuit reversed on both the failure to accommodate and retaliation claims. The court said EEOC had demonstrated that the buyer was qualified for her position apart from defendant's physical attendance requirement, and that defendant had not shown the absence of any dispute of material fact as to whether physical attendance was an "essential function" of the buyer's job. The court said defendant could not use the buyer's past attendance issues as a basis for denying her a telecommuting accommodation because her absences were due to her disability. The court then found that defendant had not carried its burden of demonstrating that accommodating the buyer would impose an undue hardship on the company. The court also held that a reasonable jury could find that defendant retaliated against the buyer by firing her in response to her filing an EEOC charge of disability discrimination.

EEOC v. Hill Country Farms d/b/a Henry's Turkey Services, 564 F.App'x 868 (8th Cir. May 8, 2010) (per curiam) (unpublished)

EEOC alleged that defendant, which provided intellectually disabled men to work at a turkey processing plant, subjected the disabled employees to a hostile work environment and adverse terms and conditions of employment, and underpaid them, due to their disabilities. Defendant hired, supervised, disciplined, and paid, the men, and required them to live in a dilapidated "Bunkhouse" overseen by defendant's

employees. The district court granted summary judgment to EEOC on the wage claim, awarding the 32 men approximately $1.375 million. Following a trial on the remaining claims, a jury returned a verdict for EEOC and awarded the men $7.5 million each in compensatory and punitive damages, reduced by the court to the $50,000 per person cap on damages under the ADA. Defendant appealed, arguing that the district court erred in failing to join the turkey processing plant as a necessary party and in admitting evidence about living conditions at the Bunkhouse. The Eighth Circuit affirmed, stating that defendant had not directed it to any objection in the record to admission of the challenged evidence, and that it saw no plain error.

Bates v. Dura Automotive Systems, Inc., 767 F.3d 566 (6th Cir. Aug. 26, 2014)

Plaintiffs alleged that defendant violated the ADA by subjecting employees at one of its facilities to a urine test that revealed use of prescription medication carrying a manufacturer's warning regarding the operation of heavy machinery. Defendant terminated the plaintiffs when they continued to take medications defendant had banned from the facility, without regard for whether plaintiffs' use of the medications had any effect on their ability to perform their jobs. At trial, the district court ruled as a matter of law that the defendant's drug testing program constituted a disability-related medical examination or inquiry under the ADA. The jury returned a verdict for most of the plaintiffs, and the company appealed.

EEOC argued as amicus curiae that defendant's drug testing regime constituted a medical examination or inquiry under the ADA, and that the plaintiffs were entitled to recover damages even though none of them were disabled under the ADA. The Sixth Circuit, in a decision that discussed at length EEOC's policy guidance on disability-related medical examinations and inquiries, concluded that there was a fact question on whether defendant's drug testing regime constituted a medical examination or inquiry under the ADA. The court agreed with EEOC that employees alleging a violation of the ADA's medical examinations and inquiries prohibition are entitled to recover statutory damages regardless of their disability status. The court remanded the case for a limited jury trial on the questions of whether the testing regime constituted a medical examination or inquiry, and if so, whether punitive damages were warranted.

11. EEOC Liability for Attorney's Fees

EEOC v. Peoplemark, Inc., 732 F.3d 584 (6th Cir. Oct. 7, 2013)

EEOC alleged in this Title VII action that defendant, a temporary-employment agency, had a policy of denying employment opportunities to individuals with a felony conviction, and that this policy had a disparate impact on African American applicants. Based on representations made by the company during EEOC's administrative investigation, EEOC believed defendant had an absolute bar against referring individuals with a felony conviction for employment. When discovery revealed that some felons had been referred and hired, EEOC clarified to defendant and the court that its disparate impact claim was based on the disproportionate effect on African American applicants of defendant's use of felony convictions as a factor in making referral decisions. After the district court denied EEOC's request for an extension of time to submit its statistical expert's report, EEOC and defendant filed a joint motion to voluntarily dismiss the case with prejudice, which the court granted. Defendant then filed a motion for attorney and expert witness fees and other expenses, which the court granted in the amount of $751,942.48.

EEOC appealed the fees and expenses award and in a 2-1 decision, the Sixth Circuit affirmed. The court said that EEOC's claim was reasonable when filed, but became unreasonable after EEOC learned in October 2009 that defendant did not have a blanket companywide policy of not referring felons. The court held that the district court did not abuse its discretion in awarding attorney's fees from October 2009 forward, and in awarding expert fees incurred from the start of the litigation because experts have to proceed on a different schedule from that governing attorneys' work.

EEOC v. Propak Logistics, Inc., 746 F.3d 145 (4th Cir. March 24, 2014)

EEOC alleged in this Title VII action that defendant, a national provider of warehousing and transportation services, denied non-Hispanic applicants employment for nonmanagement positions at a Wal-Mart distribution center in Shelby, North Carolina, because of their national origins. The district court granted summary judgment to defendant on the ground of laches, finding that EEOC had unreasonably delayed in filing the suit and that defendant had been prejudiced by the delay. The court awarded defendant attorney's fees of $189,113.50.

EEOC appealed only the award of attorney's fees and the Fourth Circuit affirmed. The court of appeals did not address EEOC's argument that it reasonably believed its suit was not barred by laches. The court ruled that EEOC had acted unreasonably in bringing suit because the suit was moot when filed. The court said that defendant had closed its North Carolina facilities and therefore no injunctive relief was available. On monetary relief, the court credited the district court's finding that EEOC could not identify the class of alleged victims. The court of appeals rejected EEOC's argument that the record of its administrative investigation showed that the agency had identified class members prior to filing suit. The court said that EEOC's investigative record identified potential victims, but did not establish definitively that these individuals would have been entitled to monetary relief if EEOC had ultimately prevailed on the merits.

D. Outreach: Educating the Public

Office of General Counsel staff engage in a variety of informational activities regarding EEOC's mission, processes, and enforcement efforts. In fiscal year 2014, legal staff made presentations at 566 "outreach" events involving over 43,000 participants. Some examples are provided below.

Employee Advocates and Interest Groups

EEOC's General Counsel discussed agency litigation at a meeting with the Congress of Day Laborers, spoke about Commission policy regarding employer use of arrest and conviction records with the National Association of Criminal Defense Lawyers, and made a presentation at the Impact Fund Class Action Conference. The San Francisco Regional Attorney participated in a panel discussion with the National Employment Lawyers Association, discussing EEOC's Strategic Enforcement Plan and litigation activities. A St. Louis Trial Attorney spoke to the Oklahoma Employment Lawyers Association about the EEOC's ADA litigation and a recent ADA trial conducted by the office. The New York Regional Attorney and two New York Trial Attorneys met with the Shinnecock Native Nation, and separately with ERASE Racism in Long Island, to discuss employment discrimination law. An Atlanta Trial Attorney discussed the ADEA and types of age discrimination at a Telephone Town Hall sponsored by AARP. A Dallas Trial Attorney discussed recent court decisions on gender stereotyping at the National LGBT Bar Association's Annual Law Conference. A New York Trial Attorney spoke to the American Cancer Society about the ADA rights of applicants and employees with hepatitis B. An Atlanta Trial Attorney discussed employment law and

Title VII at the annual assembly of the World Changers Church. Another Atlanta Trial Attorney advised indigent individuals of their rights under Title VII, EPA and the ADA as part of the Saturday Law Program sponsored by the Atlanta Volunteer Lawyers Foundation. EEOC Supervisory Trial Attorneys and Trial Attorneys made other presentations about the Commission's priorities, initiatives, and recent litigation to a host of entities, including the American Association for Affirmative Action, AARP, the Atlanta Volunteer Lawyers Association, the Farm Worker Justice Conference, the Latino Law Caucus and the Women's Law Caucus for the San Francisco Bay Area, and the Ramsey County Bar Diversity Committee.

Employer Advocates and Associations

The General Counsel discussed EEOC's litigation program with the Equal Employment Advisory Council, and was part of a roundtable discussion on critical employment issues at the law firm of Orrick & Herrington. The Dallas Regional Attorney spoke on the Strategic Enforcement Plan and EEOC litigation at a program sponsored by the Fisher & Phillips law firm. The New York Regional Attorney spoke to clients of the Ford & Harrison law firm about the Strategic Enforcement Plan, criminal backgrounds checks, GINA, and leave issues under the ADA. The St. Louis Regional Attorney spoke about EEOC's new pregnancy discrimination enforcement guidance, the ADA, and current EEOC litigation at a meeting with human resources managers from the Hotel and Lodging Association of Greater Kansas City. An Atlanta Trial Attorney discussed reasonable accommodation in religion and disability cases at a regional meeting of the Society for Human Resource Management, and discussed the progression of a charge from investigation to litigation at a luncheon sponsored by the West Side Rotary Club. A Chicago Trial Attorney appeared on panels for the Human Resources Management Association of Chicago, discussing the Commission's guidance and litigation on criminal background checks, and the Seventh Circuit's recent decision requiring noncompetitive reassignments of disabled employees to open positions within their work restrictions. A New York Trial Attorney gave a presentation on the Strategic Enforcement Plan's national priorities to the Southern Maine Society of Human Resource managers, and a Charlotte Trial Attorney participated in a panel discussion on the SEP priorities at the Association of Corporate Counsel's Annual Labor and Employment Law Update.

Immigration Issues and Immigrant Groups

The General Counsel spoke about human trafficking at the ABA's Labor & Employment Annual Conference. The San Francisco Regional Attorney discussed sexual harassment in the agricultural industry at the Farmworker Justice Conference and at the Western

Migrant Health Forum; discussed combating sexual harassment with farmworker advocates at an event organized by Oxfam; discussed EEOC procedures and EEOC's sexual harassment cases on behalf of farmworkers at the Filipino Community Center of Delano; and made presentations on "Safe at Work: Reducing Workplace Harassment and Violence Against Low-Income and Immigrant Women" as the keynote speaker at the Lawyers Committee for Civil Rights of the San Francisco Bay Area annual membership meeting, at the National Sexual Assault Conference, and to the San Francisco Human Rights Commission's Equity Advisory Committee. The San Francisco Regional Attorney also discussed human trafficking issues with the Safe Horizon Anti-Trafficking Conference and the Washington State Anti-Trafficking coalition. A New York Trial Attorney spoke about the coordinated governmentwide initiative to promote diversity and inclusion in the federal workforce through the White House Initiative on Asian Americans and Pacific Islanders at the 2014 Asian American Bar Association of New York Fall Conference. A Chicago Trial Attorney discussed U and T visas and how to obtain them as part of a presentation on "Immigration for Employment Lawyers: Pointers, Practices, and Practical Consideration" at the State Bar Association of Wisconsin's 3d Annual Health, Labor, and Employment Law Institute.

Government Entities

The San Francisco Regional Attorney provided training on assessing credibility in harassment cases for the U.S. Department of Education. An Atlanta Trial Attorney discussed reasonable accommodation in religion and disability cases at the Federal Law Enforcement Training Center. A New York Trial Attorney discussed EEOC's mission and recent case law developments with a group of law student interns from various federal agencies, and presented an overview of EEOC at an NLRB-sponsored forum for other government agencies. Another New York Trial Attorney provided an EEOC overview to a group of law students and lawyers from Israel, and to the Chinese Legal Representative for Equal Employment Opportunities of Disabled Employees/Applicants. A Chicago Trial Attorney presented an overview of the *Henry's Turkeys* ADA case (mistreatment and underpayment of cognitively impaired employees) to the federal judges and magistrate judges of Minnesota and discussed bias against persons with developmental disabilities with the Minnesota Attorney General's Office. A Milwaukee Trial Attorney explained the basics of discrimination and how to file discrimination complaints with EEOC and spoke with Mexican nationals at the Mexican Consulate in Chicago during the Consulate's annual Workers Rights Week program.

Bar Associations

The General Counsel was the keynote speaker at the Connecticut Bar Association's Labor and Employment Law Annual Meeting. He also spoke at the National Conference on Equal Opportunity Law sponsored by the EEOC Committee of the ABA's Labor and Employment Law section. A Chicago Trial Attorney addressed access to employment and to courts for persons with developmental disabilities for a Minnesota State Bar Association CLE program. The New York Regional Attorney discussed employment discrimination at the New York City Bar Association's Monday Night Law Program. The San Francisco Regional Attorney was on a panel titled "Social Justice Lawyering" for the Asian American Bar Association of the Greater Bay Area. An Atlanta Supervisory Trial Attorney moderated a panel for the annual Labor and Employment Law Institute sponsored by the Atlanta Bar and the Labor and Employment Section of the Georgia Bar, and an Assistant General Counsel spoke at the event. A Charlotte Supervisory Trial Attorney spoke on "EEOC Investigation and Litigation Trends" at the Employment & Labor Law Seminar of the Annual South Carolina Bar Convention. A New York Supervisory Trial Attorney spoke about recent Supreme Court employment discrimination decisions and about pregnancy discrimination at separate New York City Bar Association events. Another New York Supervisory Trial Attorney discussed careers in labor and employment law at a forum sponsored by the New York City Bar Association. A Charlotte Trial Attorney presented "One Size Doesn't Fit All: How Far Should Internal Investigations Go?" at the American Bar Association Employment Rights and Responsibilities Mid-Winter Meeting.

Educational Institutions

The General Counsel provided an overview of EEOC at law and cultural diversity lectures given at the University of Californian at Berkeley Thelton E. Henderson Center for Social Justice; at Texas A & M University at Corpus Christi; and at New York University's Annual Conference for Labor and Employment Law. He also spoke with the ACLU Student Group at Georgetown University Law Center about employer use of arrest and conviction records. A Chicago Supervisory Trial spoke about EEOC's lawsuits against Mach Mining (involving judicial review of EEOC's conciliation efforts) and CVS Pharmacy (involving restrictive severance agreement provisions) at a symposium on employment law organized by a New York University Law School professor. A New York Trial Attorney presented on LGBT employment discrimination issues at a Rutgers University program sponsored by EEOC and HUD. The New York Regional Attorney spoke about EEOC's history and mission at the New York Regional Conference of the White House Initiative on Asian Americans and Pacific Islanders Youth Conference for College and University Students. A Chicago Trial Attorney spoke

to MBA students at the University of Wisconsin School of Business Administration. Trial Attorneys spoke on various topics to law students at Boston College Law School, CUNY Law School, Emory University School of Law, Golden Gate University School of Law, NYU Law School, Rutgers Law School, the University of Idaho School of Law, and the University of Minnesota Law School.

Media Contacts

The New York Regional Attorney was interviewed by *Frontline* about EEOC's litigation of cases involving sexual harassment of males. The New York Regional Attorney spoke to a reporter at *Newsday* about the ADA and reasonable accommodation and to a reporter at *Bloomberg News* about sex discrimination in the financial services industry. The Chicago Regional Attorney did several media interviews discussing the Chicago office's long-term focus on and success in class and systemic cases; some of the office's significant pending lawsuits; and the impact of defense bar billing practices on defense litigation strategies. The San Francisco Regional Attorney participated in panels on the *Frontline/PBS* documentary "Rape in the Fields." A Chicago Trial Attorney did a live interview on Chicago's leading *NPR* station on pregnancy discrimination, retaliation, and Title VII/ADA protections. A New York Trial Attorney was interviewed by *Reuters* about a pending class sexual harassment lawsuit, spoke to *Newsday* about a GINA suit, and was interviewed by the director and producer of a documentary about women in business about the office's Morgan Stanley sex discrimination case. Another New York Trial Attorney participated in a Google + Hangout session on antibullying and federal civil rights protections in the education and employment contexts through the White House Initiative on Asian-Americans and Pacific Islanders, and spoke to reporters on pending age and religious discrimination lawsuits.

III. Litigation Statistics

A. Overview of Suits Filed

In FY 2014, the field legal units filed 133 merits lawsuits. (Merits suits include direct suits and interventions alleging violations of the substantive provisions of the Commission's statutes, and suits to enforce settlements reached during EEOC's administrative process.) All of the FY 2014 filings were direct suits; 32 were class or systemic suits. The field legal units also filed 35 actions to enforce subpoenas issued during EEOC investigations.

Merits Filings in FY 2014

	Count
Direct	133
Intervention	0
Administrative Settlements	0
Total	133

101 Individual Suits
15 Class Suits
17 Systemic Suits

1. Litigation Workload

The FY 2014 litigation workload (merits cases active at the start of the fiscal year plus merits suits filed during the fiscal year) totaled 361.

FY 2014 Litigation Workload

Active	Filed	Workload
228	133	361

2. Filing Authority

In EEOC's National Enforcement Plan adopted in February 1996, and reaffirmed in the Commission's December 2012 Strategic Enforcement Plan, the Commission delegated litigation filing authority to the General Counsel in all but a few areas. The General Counsel has redelegated much of this authority to EEOC's 15 regional attorneys. Redelegated cases are reviewed by staff in the Office of General Counsel prior to suit filing. The chart below shows the filing authority for FY 2014 merits suits.

FY 2014 Merits Suit Authority

	Count	Percent
Regional Attorney	107	80.5%
General Counsel	10	7.5%
Commission	16	12.0%

3. Statutes Invoked

Of the 133 merits suits filed, 57.9% contained Title VII claims, 1.5% contained EPA claims, 8.3% contained ADEA claims, 36.8% contained ADA claims, 1.5 % contained GINA claims, and 5.3% were filed under multiple statutes. (Statute numbers in the chart below exceed the number of suits filed and percentages total over 100 because suits filed under multiple statutes ("concurrent" cases) are included in the totals of suits filed under each of the statutes.)

Merits Filings in FY 2014 by Statute

	Count	Percent of Suits
Title VII	77	57.9%
ADA	49	36.8%
ADEA	11	8.3%
EPA	2	1.5%
GINA	2	1.5%
Concurrent	7	5.3%

4. Bases Alleged

As shown in the next chart, disability (35.3%), sex (33.8%), and retaliation (32.3%) were the most frequently alleged bases in EEOC suits. Race discrimination was alleged in 12.8% of the suits. Bases numbers in the chart exceed the total suit filings (133) because suits often contain multiple bases.

FY 2014 Bases Alleged in Suits Filed

	Count	Percent of Suits
Disability	47	35.3%
Sex	45	33.8%
Retaliation	43	32.3%
Race	17	12.8%
Age	10	7.5%
National Origin	10	7.5%
Religion	8	6.0%
Equal Pay	2	1.5%
Genetic. Info.	2	1.5%

5. Issues Alleged

Discharge was the most frequently alleged issue in EEOC suits filed (71.4%) and harassment the second (26.3%).

FY 2014 Issues Alleged in Suits Filed

	Count	Percent of Suits
Discharge	95	71.4%
Harassment	35	26.3%
Disability Accommodation	26	19.5%
Hiring	23	17.3%
Terms/Conditions	11	8.3%
Prohibited Med. Inquiry/Exam	8	6.0%
Religious Accommodation	6	4.5%
Discipline	6	4.5%
Wages	5	3.8%
Recordkeeping Violation	4	3.0%
Promotion	3	2.3%
Benefits	1	0.8%

B. Suits Filed by Bases and Issues

1. Sex Discrimination

As shown below, 55.6% of cases with sex as a basis contained a discharge allegation, 52.3% contained a harassment allegation, and 11.1% contained a hiring allegation.

Sex Discrimination Issues

	Count	Percent
Discharge	25	55.6%
Harassment	24	53.3%
Hiring	5	11.1%
Wages	2	4.4%
Terms/Conditions	1	2.2%
Discipline	1	2.2%
Benefits	1	2.2%
Promotion	1	2.2%

2. Race Discrimination

Harassment was the most frequently alleged issue in suits containing race discrimination claims (47.1%), followed by discharge (35.3%).

Race Discrimination Issues

	Count	Percent
Harassment	8	47.1%
Discharge	6	35.3%
Terms/Conditions	2	11.8%
Wages	2	11.8%
Hiring	2	11.8%
Assignment	1	5.9%
Promotion	1	5.9%

3. National Origin Discrimination

As shown in the next chart, harassment was the most frequently alleged issue in suits where national origin was a basis (60%).

National Origin Discrimination Issues		
	Count	Percent
Harassment	6	60.0%
Discharge	3	30.0%
Terms and conditions	2	20.0%
Wages	1	10.0%
Assignment	1	10.0%
Hiring	1	10.0%
Sexual Harassment	1	10.0%

4. Religious Discrimination

Failure to accommodate was the most frequently alleged issue in religious discrimination cases, followed by discharge (62.5%) and hiring (50%).

Religious Discrimination Issues		
	Count	Percent
Reasonable Accommodation	6	75.0%
Discharge	5	62.5%
Hiring	4	50.0%
Terms/Conditions	1	12.5%
Harassment	1	12.5%

5. Age Discrimination

Discharge was an issue in half of the cases with age discrimination claims, and hiring in 40% of such cases.

Age Discrimination Issues		
	Count	Percent
Discharge	5	50.0%
Hiring	4	40.0%
Harassment	2	20.0%
Promotion	1	10.0%
Early Retire. Incentive	1	10.0%

6. Disability Discrimination

Discharge was the most frequently alleged issue in disability suites (68.1%), followed by failure to accommodate (55.3%) and hiring (19.1%).

Disability Discrimination Issues

	Count	Percent
Discharge	32	68.1%
Reasonable Accommodation	26	55.3%
Hiring	9	19.1%
Prohibited Med. Inquiry/Exam	5	10.6%
Discipline	1	2.1%

7. Genetic Information

Prohibited medical inquiry was the issue in both cases raising GINA claims.

Genetic Information Issues

	Count	Percent
Prohib. Med. Inq./Exam	2	100%

8. Retaliation

Discharge was an issue in 76.7% of suits containing retaliation claims

Retaliation Issues

	Count	Percent
Discharge	33	76.7%
Terms/Conditions	7	16.3%
Discipline	5	11.6%
Harassment	2	4.7%

C. Bases Alleged in Suits Filed from FY 2010 through FY 2014

The table below shows, by year, the bases on which EEOC suits were filed over the last 5 years.

Bases Alleged in Suits Filed FY 2010-2014

Percent Distribution

FY	Sex (F)	Sex (P)	Sex (M)	Race	Nat. Or.	Relig.	Dis.	Gen. Info.	Age	Retal.
2010	32.4%	7.6%	4.0%	17.2%	8.4%	9.6%	14.8%	0.0%	10.4%	37.6%
2011	24.5%	7.3%	2.3%	12.3%	8.4%	5.7%	29.9%	0.0%	7.7%	35.6%
2012	20.5%	9.0%	1.6%	9.0%	4.1%	7.4%	36.1%	0.0%	9.0%	25.4%
2013	16.8%	7.6%	2.3%	10.7%	4.6%	9.2%	34.4%	2.3%	5.3%	34.4%
2014	21.8%	10.5%	1.5%	12.8%	7.5%	6.0%	35.3%	1.5%	7.5%	32.3%

D. Suits Resolved

In FY 2014, the Office of General Counsel resolved a total of 136 merits lawsuits, recovering $22,489,672 in monetary relief.

1. Types of Resolutions

As the chart below indicates, 89.7% of EEOC's suit resolutions were settlements, 8.8% were determinations on the merits by courts or juries, and 1.5% were voluntarily dismissals. (The figures on favorable and unfavorable court orders do not take appeals into account.)

Types of Resolutions FY 2014

	Count	Percent
Consent Decree	120	88.2%
Settlement Agreement	2	1.5%
Favorable Court Order	4	2.9%
Unfavorable Court Order	8	5.9%
Voluntary Dismissal	2	1.5%
Total	136	100%

2. Statutes Invoked

Of the 136 merits suits resolved during the fiscal year, 64% contained Title VII claims. ADA claims were present in 34.6% of the resolutions and ADEA claims in 8.1%. (Statute numbers in the chart below exceed the number of suits resolved and the percentages total over 100 because suits resolved under multiple statutes ("concurrent" cases) are also included in the totals of suits resolved under each statute.)

FY 2014 Resolutions by Statute

	Count	Percent of Suits
Title VII	87	64.0%
EPA	5	3.7%
ADEA	11	8.1%
ADA	47	34.6%
GINA	1	0.7%
Concurrent	13	9.6%

As shown below, Title VII suits accounted for about 68% of monetary relief obtained in FY 2014 and ADA suits for about 17%. Recoveries in concurrent suits are not included in the totals for the particular statutes.

FY 2014 Monetary Relief by Statute (rounded)

Statute	Relief (millions)	Relief Percent
Title VII	$15.3	67.9%
EPA	$0.13	0.56%
ADEA	$1.9	8.4%
ADA	$3.7	16.6%
Concurrent	$1.5	6.5%
Total	$22.5	100.0%

3. Bases Alleged

As shown in the following chart, sex was a basis in 37.5% of the suits resolved, retaliation in 34.6%, disability in 31.6%, race in 11%, age and religion in 6.6% each, and national origin in 3.7%. The total count exceeds suits resolved (136) because suits often contain multiple bases.

Bases Alleged in Suits Resolved

	Count	Percent of Suits
Sex	51	37.5%
Retaliation	47	34.6%
Disability	43	31.6%
Race	15	11.0%
Age	9	6.6%
Religion	9	6.6%
National Origin	5	3.7%
Equal Pay	4	2.9%
Genetic Inform.	3	2.2%

4. Issues Alleged

Discharge was an issue in 67.6% of the cases resolved during the fiscal year, harassment in 26.5%, hiring in 19.1%, and disability accommodation in 18.4%.

Issues in Suits Resolved

	Count	Percent of Suits
Discharge	92	67.6%
Harassment	36	26.5%
Hiring	26	19.1%
Disability Accomm.	25	18.4%
Terms and Conditions	14	10.3%
Wages	9	6.6%
Religious Accomm.	7	5.1%
Discipline	6	4.4%
Promotion	5	3.7%
Prohib. Med. Inq./Exam	4	2.9%

E. Appellate Activity

EEOC filed briefs as appellant in 13 merits cases during fiscal year 2014, and defended appeals in 6 cases. EEOC also filed one appeal in an action to enforce an administrative subpoena during the fiscal year. At the end of the fiscal year, OGC had 23 cases pending in the United States courts of appeals involving merits suits, 17 as appellant and 6 as appellee. EEOC's Appellate Litigation Services also filed 17 briefs as amicus curiae during fiscal year 2014.

F. Attorney's Fees Awarded against EEOC

EEOC v. Peoplemark, Inc., 732 F.3d 524 (6th Cir. Oct. 7, 2013)

EEOC alleged in this Title VII action, filed September 29, 2008, that defendant, a temporary-employment agency, had a policy of denying employment opportunities to individuals with a felony conviction, and that this policy had a disparate impact on African American applicants. EEOC's suit was voluntarily dismissed based on a joint motion by EEOC and defendant. The district court granted defendant attorney's fees from the time the court found EEOC should have known that defendant did not have a blanket policy of denying employment to applicants with felony convictions. The court awarded defendant $219,350.70 in attorney's fees, $526,172 in expert witness fees, and $6,419.78 in other expenses. EEOC appealed and the court of appeals, in a 2-1 decision, affirmed.

EEOC v. Propak Logistics, Inc., 746 F.3d 145 (4th Cir. March 24, 2014)

EEOC alleged in this Title VII action, filed August 12, 2009, that defendant, a national provider of warehousing and transportation services, denied non-Hispanic applicants employment for nonmanagement positions at a Wal-Mart distribution center in Shelby, North Carolina, because of their national origins. The district court granted summary judgment to defendant on the ground of laches, finding that EEOC had unreasonably delayed in filing the suit and that defendant had been prejudiced by the delay. The court awarded defendant attorney's fees of $189,113.50. EEOC appealed only the award of attorney's fees and the court of appeals affirmed.

EEOC v. BOK Financial Corporation, No. 1:110cv-01132 (D. N.M. Dec. 6, 2013)

EEOC alleged in the Title VII/ADEA action, filed December 27, 2011, that defendant, a bank, discharged two female managers over the age of 40 because of their sex and age. The court awarded defendant $26,570.06 in attorney's fees and costs incurred in redeposing three EEOC employees, including fees for briefing the sanctions motion, based on the court's finding that EEOC had improperly instructed the deponents not to answer questions and had failed to produce a Fed. R. Civ. P. 30(b)(6) representative prepared and able to answer questions. EEOC did not appeal the award.

EEOC v. Womble Carlyle Sandridge & Rice, LLP, No. 1:13-CV-46, 2014 WL 1689727 (M.D.N.C. April 29, 2014)

EEOC alleged in this ADA action, filed January 16, 2013, that defendant, a law firm, failed to reasonably accommodate the disability of an administrative employee and discharged her because of her disability. The court awarded defendant $22,900 in attorney's fees and expenses incurred in bringing a motion for spoliation sanctions and in attempting to conduct additional discovery regarding mitigation of damages, caused by the administrative employee's failure to retain records of her job search efforts that were relevant to EEOC's backpay claim for the employee. EEOC did not appeal the award.

G. Resources

1. Staffing

Both total field staff and field attorneys fell in each year since FY 2011.

OGC Staffing (On Board)

Year	HQ	All Field	Field Attorneys*
2010	57	324	209
2011	56	333	213
2012	52	317	211
2013	50	296	195
2014	48	284	192

*** Includes Regional Attorneys, Supervisory Trial Attorneys, and Trial Attorneys**

2. Litigation Budget

EEOC 's litigation funding fell appreciably from the prior 4 years.

Litigation Support Funding (Millions)

FY	FUNDING
2010	$4.96
2011	$4.10
2012	$4.07
2013	$4.13
2014	$3.59

H. Historical Summary: Tables and Charts

1. EEOC 10-Year Litigation History: FY 2005 through FY 2014

	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12	FY13	FY14
All Suits Filed	416	403	362	325	316	272	301	155	149	168
Merits Suits	381	371	336	290	281	250	261	122	131	133
Suits with Title VII Claims	295	294	268	224	188	192	162	66	77	77
Suits with ADA Claims	49	42	46	37	76	41	80	45	49	49
Suits with ADEA Claims	44	50	32	38	24	29	26	12	7	11
Suits with EPA Claims	13	10	7	0	2	2	2	2	5	2
Suits with GINA Claims	0	0	0	0	0	0	0	0	3	2
Suits filed under multiple statutes[1]	17	22	16	9	9	14	9	3		7
Subpoena and Preliminary Relief Actions	35	32	26	35	35	22	40	33	18	35
All Resolutions	378	418	387	367	352	318	318	280	228	144
Merits Suits	338	383	364	336	324	289	278	251	213	136
Suits with Title VII Claims	259	295	297	265	254	201	215	159	137	87
Suits with ADA Claims	41	50	41	46	40	59	43	72	60	47
Suits with ADEA Claims	45	50	36	39	38	39	26	29	17	11
Suits with EPA Claims	12	8	14	3	5	0	0	2	4	5
Suits with GINA Claims	0	0	0	0	0	0	0	0	1	1
Suits filed under multiple statutes	18	17	19	16	13	10	8	11	6	13
Subpoena and Preliminary Relief Actions	40	35	23	31	28	29	40	29	15	8
Monetary Benefits ($ in millions)[2]	104.8	44.3	54.8	101.1	81.6	85.6	89.7	43.2	39.0	22.5
Title VII	98	34.3	38.9	64.9	64.5	74.0	53	34.2	22.4	15.3
ADA	3.4	2.8	3.1	3.3	9.5	2.9	27.1	5.5	14.0	16.6
ADEA	2.4	5.1	2.4	29.9	6.7	5.8	8.4	2.6	2.1	8.4
EPA	0	0	0.2	1.0	0.02	0	0	0	.24	.56
GINA	0	0	0	0	0	0	0	0	0	0
Suits filed under multiple statutes[3]	1	2.1	10.2	1.7	0.9	2.9	1.1	0.9	.24	6.5

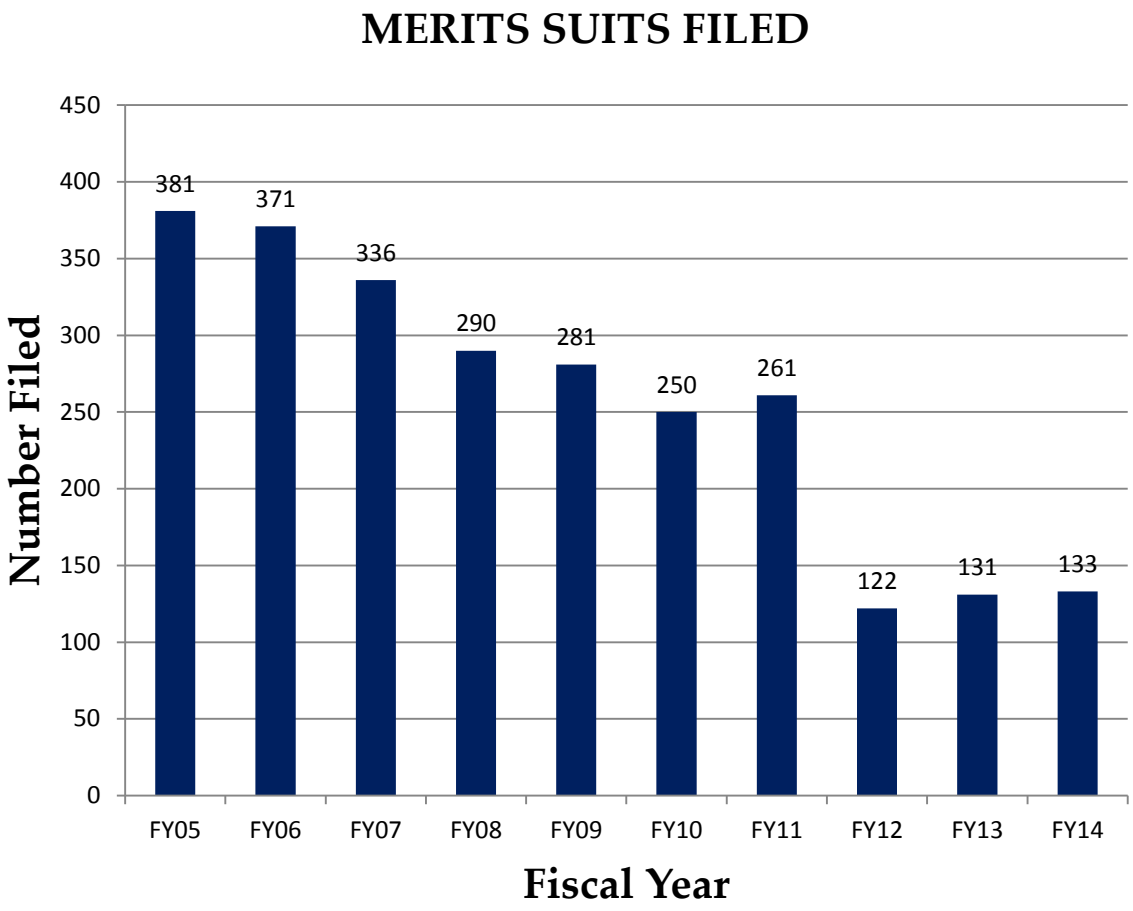
[1] Suits filed or resolved under multiple statutes are also included in the tally of suits filed under the particular statutes.

[2] The sum of the statute benefits in some years will be different from total benefits for the year due to rounding.

[3] Monetary benefits recovered in suits filed under multiple statutes are counted separately and are not included in the tally of suits filed under the particular statutes.

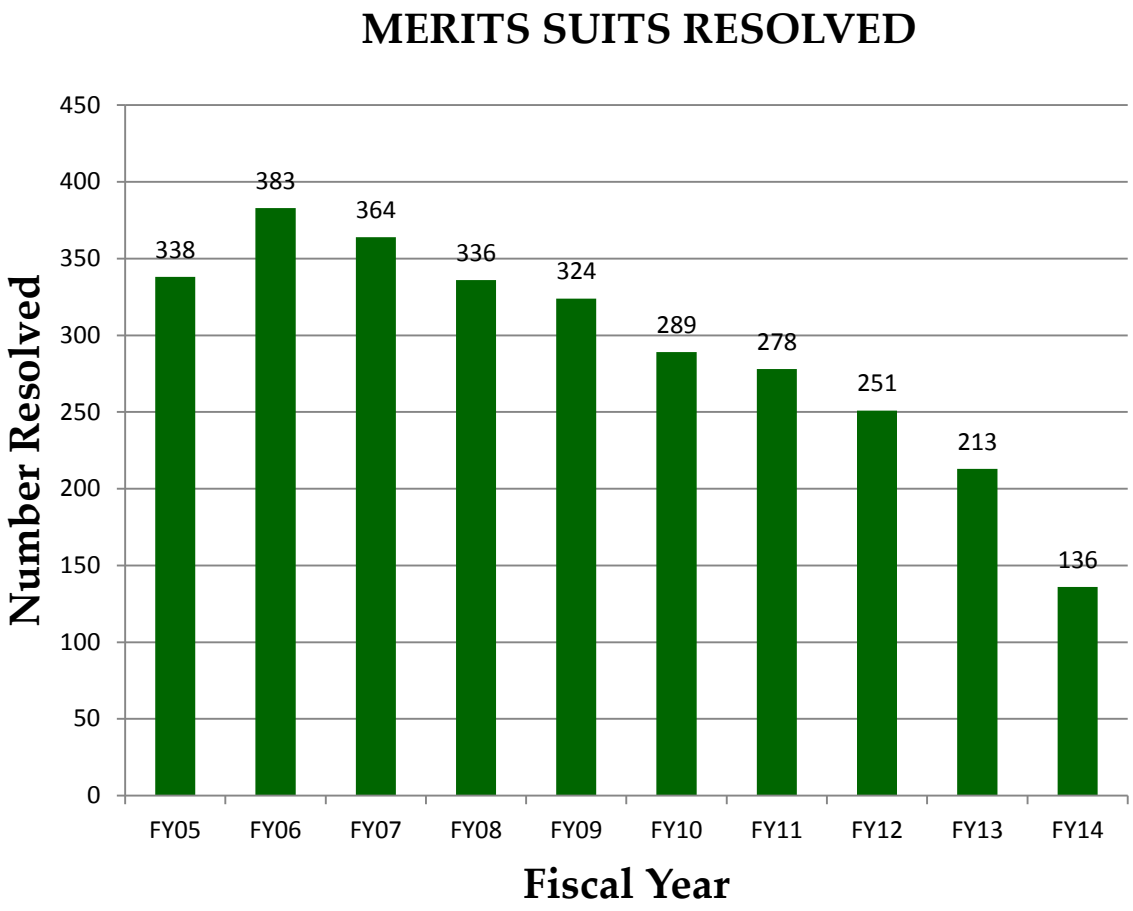
2. Merits Suits Filed FY 2005 through FY 2014

The chart below shows the number of merits suits filed for FY 2005 through FY 2014



3. Merits Suits Resolved FY 2005 through FY 2014

The chart below shows the number of merits suits resolved for FY 2005 through FY 2014.



4. Monetary Recovery FY 2005 through FY 2014

The chart below shows the monetary recovery for FY 2005 through FY 2014.